United States Court of Appeals

for the Second Circuit

APPENDIX

To be argued by
RICHARD M. SHARFMAN

74-1915

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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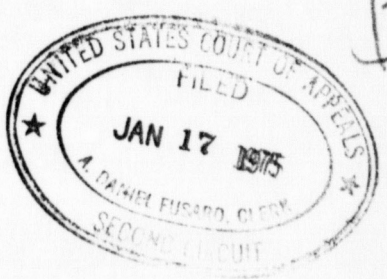

No. 74-1915

HARRY S. SAMUELS,

Plaintiff-Appellant,

-against-

ARMSTRONG CORK COMPANY,

Defendant-Appellee.

Appeal from Part of a Judgment of the United States District Court for the Southern District of New York

APPENDIX

FREEMAN, MEADE, WASSERMAN & SHARFMAN

Attorneys for Plaintiff-Appellant
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RICHARD M. SHARFMAN,

Of Counsel.

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69 Civ 3022

Civ 3022
CIVIL DOCKET

TED STATES DISTRICT COURT

Jury demand date:

JUDGE METZNER
JUDGE LEVET

m No. 106 Rev.

TITLE OF CASE

ARRY S. SAMUELS

VS.

RMSTRONG CORK COMPANY

ATTORNEYS

For plaintiff:
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Manhattan, New York 10017-
MO-1-3200--
Harry S. Samuels Pro Se (2-11-74)
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For defendant:
Chadbourne, Park, Whiteside & Wolff
--25 B'Way, N.Y.--344-8900-10004--
30 Rockefeller Plaza, N.Y. 10020-54

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.		DISB.	
S. 6 mailed x	Clerk		7-14-69	Chadbourne	15	-	15	-
			7-25-69	U.S. Treas.	5	-		
S. 6 mailed ✓	Marshal		3/7/74	Samuels Check			5	-
Basis of Action: Breach of Agreement. $4,851,000	Docket fee							
	Witness fees							
Action arose at	Depositions							

JUDGE LEVET

PROCEEDINGS	Date Order or Judgment Noted
9Filed Petition & Reocrd of removal fromSupreme Court State of New York,County of New York.	
9 Filed notice of Removal.and untertaking on removal $500 National Surety Corporation.	
9 Filed Defts notice to take depostion of Pltff.	CPW&W
Filed ANSWER to complaint.	
Filed pltff's request for production of documents under rule 34	
Filed pltff's notice to take deposition of deft., as party, by Max Banzhaf	
Filed pltff's notice to take deposition of deft., as a pty, by Tom A. Finch Sr.	
Filed pltff's notice to take deposition of deft., as a pty by Frederick S. Donnelly Jr.	
Filed Deft's Trial Brief.	
Filed Pltff's Pre-Trial Memorandum.	
3 Filed notice of reassignment to Levet, J. m/n.	
Before Levet,J. Non-Jury trial begun.	
3 Trial continued	
3 " " & concluded. Decision Reserved.	
Filed Pre-trial Conference 10-9-73	
3Filed transcript of record of proceedings dated 10-11-73	
3Filed " " " " " " " 10- 9-73.	
3Filed " " " " " " " 10-10-73.	
73Filed pltff's reply memorandum on the issue of Accord & Satisfaction.	
73Filed List of pltff's exhibits.	
73Filed pltff's proposed findings of fact & conclusions of law.	
73Filed list of deft's exhibits.	
73Filed deft's supplemantary memorandum in support of its defense.	
73Filed deft's trial brief.	
73Filed deft's proposed findings of fact & conclusions of law.	
-73Filed Opinion,Findings of fact & conclusions of law #40146:This action, was commenced by pltff. for monies allegedly due him for services, he rendered as a business broker pursuant to a written agreement , with deft. Deft. Armstrong Cork Co. is entitled to judgment , dismissing Counts I & II of the complaint, togethar with costs , of this action. Pltff. is entitled to a judgment in the amount, of $3,140, together with interest from Dec.12,1967 without costs. Settle judgment on notice pursuant hereto. Levet,J. m/n	
74 Filed JUDGMENT#74,048: Ordered that pltff. take nothing of deft. , with respect to counts I & II of the complaint, Counts I & LL , of the complaint be dismissed on the merits, without costs. With respect to counts III &IV of the complaint, pltff. recover, from deft. the amount of $3,140.00 with rate of interest as , indicated. Levet,J. Judg. Ent. Clerk. m/n Ent.1-10-74.	
-74Filed deft's notice of entry of Judgment dated 1-9-74.	
-74 Filed transcript of record of proceedings, dated 10-10-11-73	
74 Filed pltff's Pro Se notice of appeal to the USCA from Judgment ent 1-9-74. Mailed copy to Chadbourne,Parke,Whiteside & Wolfe.	
74 Filed Order that Harry S. Samuels is substituted as atty of record, Pro Se. So ordered Levet,J.	
74 Filed deft's attys notice to change of address.	
5-74Filed Copy of Appellee's letter to appellant dated 2-25-74,regarding, transcripts to be included in record on appeal.	
5-74Filed stip & order that time in which pltff-Appellant may transmit, the record on appeal is ext. 37 days to April 25-74. So ordered. Levet,J.	
-74 Filed Satisfaction of Judgment #74,048.	

Cont'd on page #3

. 110 Rev. Civil Docket Continuation

Page #3

DATE	PROCEEDINGS
	Filed slip & order that time which pltff Appellant may transmit the record on appeal is ext. to 5-27-74. Levet,J.
	Filed transcript of record of proceedings [illegible] 10-73.
	[illegible] 9/10/73
-74	Filed appellant's $250 bond on appeal for costs. 9/11/73
30-74	Filed stipulation that exhibits are original and designated for the record on appeal
29-74	Filed deposition of Frederick Stockham Donnelly Jr.
29-74	Filed deposition of Deposition of Max Banzhaf.
30 74	Filed notice that record on appeal has been certified & transmitted to the USCA on this 30th day of July, 1974.
Oct.7/74	Filed deft.-appellee's notice of motion to strike ret: 10/11/74.
Oct.7/74	Filed deft.-appellee's memo. of law in support of motion to strike.
Oct.18-74	Filed Memo-endorsed on deft-Appellee motion filed 10-7-74 to strike, Motion granted pursuant to rule 10(e). Settle order on notice. Levet,J. m/n
ov.7-74	Filed Order that deft-Appellees' motion to strike from the record on appeal the deposition of Max Banzhaf, except page 9, & the lines & pages as indicated. The clerk of the district court promptly transmit this order to the Clerk of the court, of appeals, second Circuit. Levet,J.
ov.11-74	Filed Notice that record on appeal has been certified and transmitted to US Court of Appeal for 2nd Circuit.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By _____
Deputy Clerk

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------x

HARRY S. SAMUELS, :

Plaintiff, :

- against - : VERIFIED COMPLAINT

ARMSTRONG CORK COMPANY, :

Defendant. :

----------x

Plaintiff by his attorneys, SHEA GALLOP CLIMENKO & GOULD, for his complaint herein, alleges:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times herein mentioned plaintiff was and still is a resident of the State of New York.

2. At all times herein mentioned defendant was and still is a corporation incorporated under the laws of the State of Pennsylvania, and was and is duly authorized to do business in this State.

3. On or about August 25, 1966, plaintiff and defendant entered into an agreement, a copy of which is annexed hereto as Exhibit "A", pursuant to which plaintiff was to act as a finder, broker or negotiator for the submission of, or other

action with reference to, proposals involving companies for possible acquisition by defendant and the latter was to pay plaintiff as a fee therefor a sum of money equal to three percent (3%) of the total consideration paid by defendant for any acquisition found by plaintiff on defendant's behalf and consummated by defendant.

4. Subsequent to August 25, 1966, plaintiff advised defendant that Thomasville Furniture Industries, Inc. ("Thomasville") was available for a possible acquisition and, at defendant's request, plaintiff arranged for a meeting between defendant and officials of Thomasville.

5. Although plaintiff offered to negotiate and consummate the said acquisition of Thomasville on defendant's behalf, plaintiff was requested by defendant not so to do.

6. As a result of plaintiff's efforts, defendant entered into negotiations with Thomasville which resulted in the acquisition of Thomasville by defendant by means of a merger on or about November 1, 1968 and the issuance by defendant in connection therewith of shares of its capital stock having a value of $160,000,000.

7. Defendant breached said agreement in that it failed and neglected to pay plaintiff the whole or any part of the sum of $4,800,000, the amount due to plaintiff thereunder.

AS AND FOR A SECOND CAUSE OF ACTION

8. Plaintiff realleges the allegations in paragraphs "1", "2" and "6" hereof.

9. In or about August 1966, plaintiff, at defendant's request, agreed to act as a finder, broker or negotiator for the submission of, or other actions with reference to, proposals involving companies for possible acquisition by defendant.

10. Subsequent thereto plaintiff submitted to defendant for possible acquisition by the latter the names of numerous companies, among which was Thomasville Furniture Industries, Inc. ("Thomasville").

11. In accordance with defendant's request, plaintiff arranged for a meeting between defendant and officials of Thomasville.

12. The real and reasonable value of the work, labor and said services performed by plaintiff in connection with the aforesaid acquisition of Thomasville is $4,800,000, which defendant has refused to pay although duly demanded.

13. By reason of the foregoing, plaintiff has sustained damages in the sum of $4,800,000.

AS AND FOR A THIRD CAUSE OF ACTION

14. Plaintiff realleges the allegations in paragraphs

"1", "2" and "3" hereof.

15. Subsequent to August 25, 1966, plaintiff advised defendant that certain assets of B. T. Babbitt, Inc. were available for acquisition and, at defendant's request, plaintiff arranged for a meeting between defendant and officials of B. T. Babbitt, Inc. to discuss said acquisition.

16. Plaintiff participated in the negotiation of the said acquisition to the extent requested by defendant and although plaintiff offered to continue to negotiate and to consummate the acquisition on defendant's behalf, plaintiff was requested by defendant not to so do.

17. As a result of plaintiff's efforts, defendant acquired certain assets of B. T. Babbitt, Inc. in or about 1967.

18. On information and belief, the value of said assets amounted to $2,000,000, by reason of which there became due and owing from defendant to plaintiff the sum of $60,000.

19. Defendant breached said agreement in that it failed and neglected to pay plaintiff the said sum of $60,000 except for the sum of $9,000, by reason of which there is now due and owing from defendant to plaintiff the sum of $51,000.

AS AND FOR A FOURTH CAUSE OF ACTION

20. Plaintiff repeats the allegations in paragraphs "1", "2", "9", "17" and "18" hereof.

21. Subsequent to August 1966, plaintiff submitted to defendant for possible acquisition by the latter the names of numerous companies, among which was B. T. Babbitt, Inc. ("Babbitt").

22. In accordance with defendant's request, plaintiff arranged for a meeting between defendant and officials of Babbitt.

23. The real and reasonable value of the work, labor and services performed by plaintiff in connection with the aforesaid acquisition of certain assets of Babbitt is $60,000, which defendant has failed and neglected to pay except for the sum of $9,000.

24. By reason of the foregoing, plaintiff has sustained damages in the sum of $51,000.

WHEREFORE, plaintiff demands judgment against defendant in the sum of $4,851,000, with interest, together with the costs and disbursements of this action.

SHEA GALLOP CLIMENKO & GOULD
Attorneys for Plaintiff
330 Madison Avenue
New York, New York 10017
MO 1-3200

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

HARRY S. SAMUELS, being duly sworn, deposes and says that he is the plaintiff herein; that he has read the foregoing complaint and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes them to be true.

s/ Harry S. Samuels
Harry S. Samuels

Sworn to before me this
26th day of June, 1969.

s/ ANN SINGERMAN
Notary Public, State of New York
No. 31-3687100
Qualified in New York County
Term Expires March 30, 1971

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

HARRY S. SAMUELS, :

Plaintiff, :

-against- :

ARMSTRONG CORK COMPANY, :

Defendant. :

- - - - - - - - - - - - - - - - - - - -x

69 Civ. 3022

ANSWER

Defendant, by its attorneys, Chadbourne, Parke, Whiteside & Wolff, answering the complaint:

FIRST DEFENSE

FIRST: Denies each and every allegation made in paragraph 3 of the complaint, except admits that on or about August 25, 1966 plaintiff and defendant entered into an agreement a copy of which is annexed to the complaint, which agreement was terminated on or about January 11, 1967, and refers to that agreement for its terms and conditions.

SECOND: Denies each and every allegation made in paragraph 4 of the complaint.

THIRD: Denies each and every allegation made in paragraph 5 of the complaint, except admits that plaintiff was requested and directed by defendant not to negotiate or

otherwise communicate with any representative of Thomasville Furniture Industries, Inc. (hereinafter called "Thomasville").

FOURTH: Denies each and every allegation made in paragraph 6 of the complaint, except admits that representatives of defendant entered into negotiations with representatives of Thomasville which resulted in the acquisition of Thomasville by defendant by means of a merger on or about November 1, 1968 and the issuance by defendant in connection therewith of shares of its capital stock.

FIFTH: Denies each and every allegation made in paragraph 7 of the complaint.

SIXTH: With respect to paragraph 8 of the complaint, adopts herein by reference paragraph FOURTH of this answer.

SEVENTH: Denies each and every allegation made in paragraph 9 of the complaint, except admits that on or about August 25, 1966 plaintiff and defendant entered into an agreement a copy of which is annexed to the complaint, which agreement was terminated on or about January 11, 1967, and refers to that agreement for its terms and conditions.

EIGHTH: Denies each and every allegation made in paragraph 10 of the complaint, except admits that subsequent to August 25, 1966 plaintiff submitted to defendant the names of companies which plaintiff represented as being available for acquisition.

NINTH: Denies each and every allegation made in paragraphs 11, 12 and 13 of the complaint.

TENTH: With respect to paragraph 14 of the complaint, adopts herein by reference paragraph FIRST of this answer.

ELEVENTH: Denies each and every allegation made in paragraphs 15, 16 and 17 of the complaint, except admits that subsequent to August 25, 1966 plaintiff advised defendant that certain assets of B. T. Babbitt, Inc. (hereinafter called "Babbitt") were available for acquisition and, at defendant's request, plaintiff arranged for a meeting attended by representatives of defendant and representatives of Babbitt to discuss said acquisition, which meeting was also attended by plaintiff, and that defendant acquired certain assets of Babbitt in or about 1967.

TWELFTH: Denies each and every allegation made in paragraph 18 of the complaint.

THIRTEENTH: Denies each and every allegation made in paragraph 19 of the complaint, except admits that defendant paid plaintiff the sum of $9,000.

FOURTEENTH: With respect to paragraph 20 of the complaint, adopts herein by reference paragraphs SEVENTH, ELEVENTH AND TWELFTH of this answer.

FIFTEENTH: Denies each and every allegation made in paragraphs 21 and 22 of the complaint, except admits that subsequent to August 1966 plaintiff submitted to defendant the names of companies which plaintiff represented as being available for acquisition, that plaintiff advised defendant that certain assets of Babbitt were available for acquisition and, at defendant's request, plaintiff arranged for a meeting attended by representatives of defendant and representatives of Babbitt.

SIXTEENTH: Denies each and every allegation made in paragraph 23 of the complaint, except admits that defendant has paid plaintiff the sum of $9,000.

SEVENTEENTH: Denies each and every allegation made in paragraph 24 of the complaint.

SECOND DEFENSE

EIGHTEENTH: The complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

NINETEENTH: Each claim alleged in the complaint is barred by the applicable statute of frauds.

FOURTH DEFENSE

TWENTIETH: Plaintiff and defendant have arrived at an accord and satisfaction in consideration of the sum of $9,000

paid to plaintiff by defendant and accepted by plaintiff in full accord and satisfaction of each claim alleged in the complaint.

WHEREFORE, defendant demands judgment dismissing the complaint, together with its costs and disbursements in this action.

CHADBOURNE, PARKE, WHITESIDE & WOLFF

By s/ Richard B. Leather
A Member of the Firm

Attorneys for Defendant
25 Broadway
New York, New York 10004
Tel. No. 344-8900

A papers

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

HARRY S. SAMUELS, :

Plaintiff, :

- against - : 69 Civ. 3022

ARMSTRONG CORK COMPANY, :

Defendant. :

- x

DEFENDANT'S TRIAL BRIEF

CHADBOURNE, PARKE, WHITESIDE & WOLFF
Attorneys for Defendant
25 Broadway
New York, New York 10004
(212) 344-8900

P. G. Pennoyer, Jr.
Bruce W. Keihner

Of Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

HARRY S. SAMUELS, :

Plaintiff, :

- against - : 69 Civ. 3022

ARMSTRONG CORK COMPANY, :

Defendant. :

- x

TRIAL BRIEF

I

NATURE OF CASE

A. Background

This is an action by a professional business broker for finder's fees which was instituted in 1969 in the Supreme Court of the State of New York, County of New York. On the basis of diversity of citizenship, the case was removed to this Court, and is a non jury case. Discovery was effected by depositions and inspection of the defendant's documents. Interrogatories were not served by either party.

All documents that the defendant and the plaintiff anticipate using at trial have been consecutively numbered. Both parties have stipulated to the authenticity of the documents, but not to their admissibility.

A list of witnesses that Armstrong intends to call, their identity, and a brief description of their testimony is attached hereto as Exhibit A.

Paul G. Pennoyer, Jr., Esq. and Bruce W. Keihner, Esq., will try this case for defendant, and expect the trial will take four to five days.

This suit relates to two acquisitions by the Armstrong Cork Company ("Armstrong"), Thomasville Furniture Industries, Inc. ("Thomasville") and B. T. Babbitt, Inc. ("Babbitt"), and consists of four causes of action. In connection with the Thomasville acquisition the plaintiff alleges two causes of action for finder's fees. A cause of action for $4,800,000 based upon a contract between plaintiff and defendant dated August 25, 1966 (the "Contract") (Attached hereto as Exhibit B), and a common law cause of action in the amount of $4,800,000 for work, labor and services performed. Similarly, plaintiff alleges two causes of action in connection with the Babbitt acquisition. A cause of action in the amount of $51,000 based upon the Contract, and a common law cause of action in the amount of

$51,000 for work, labor and services performed.

B. Basic Issue

Whether either under the "Contract" or common law plaintiff is entitled to a finder's fee based on the facts in this case.

(1) Although the Contract does not define the term "finder", the Contract provided for payment of 3% of the consideration paid for an acquisition "found and negotiated and consummated" by the plaintiff for Armstrong. However, if a possible acquisition submitted by the plaintiff was already being considered by Armstrong, no fee, other compensation, expense, or reimbursement was due.

(2) Under common law of New York and Pennsylvania, the two jurisdictions having contacts with this case, a finder must, at least, introduce or arrange the initial meeting between the parties who eventually consummate the acquisition. Absent a specific agreement, a finder cannot recover any compensation or expenses.

C. Armstrong's Narrative Factual Summary

Regarding Thomasville, Armstrong is not liable to plaintiff for any finder's fees under the Contract or at common law.

Contact with Thomasville was initiated in November 1965 by Armstrong itself, not by the plaintiff,

Armstrong's officers and members of its Acquisition Committee had already visited Thomasville twice and discussed Armstrong's entry into the furniture industry via acquisition or internal expansion with the President of Thomasville at least six months before even plaintiff claims he had his first contact with Armstrong in July 1966.

At the first meeting between the plaintiff and Armstrong's officers July 1966, the plaintiff was explicitly and unequivocally told by Armstrong's Vice President and Chairman of the Acquisition Committee that Thomasville was already being actively pursued by Armstrong, that Armstrong would continue to pursue Thomasville independently and without any assistance from plaintiff, and that Thomasville was not a part of any future agreement with the plaintiff. Consequently, Thomasville was never part of the subsequent Contract.

Plaintiff did not find Thomasville for Armstrong. He never suggested the name Thomasville to Armstrong. To protect his interests, the numerous companies the plaintiff presented to Armstrong were always clearly identified in writing by plaintiff as his submission. Nowhere is the name Thomasville identified as plaintiff's submission in plaintiff's letters of referral or any other document.

Throughout the term of the plaintiff's employment, Armstrong continually kept Thomasville separate and independent from the possible acquisitions being handled by the plaintiff. Armstrong never requested or authorized the plaintiff to use its name, arrange any meeting, approach, or initiate discussions with Thomasville.

All meetings between Armstrong and Thomasville were arranged independently of plaintiff.

It must be emphasized that there were four meetings between Armstrong and Thomasville, November 1965, January 1966, October 1966, January 1967, all occurring before the plaintiff himself claims he made any contact at all with Thomasville. Furthermore, the plaintiff cannot point to a single meeting between Armstrong and Thomasville that he arranged or even one introduction that he made.

At this point it should be mentioned that there are large discrepancies between the documented facts and the plaintiff's testimony. This result was anticipated by Armstrong. During plaintiff's first visit to Armstrong, he was informed that Thomasville was already being pursued and would continue to be pursued independently of plaintiff, and, therefore, plaintiff

was not kept informed of the progress of the Thomasville discussions. Consequently, plaintiff's knowledge of Armstrong- Thomasville relations, especially the chronology, is very sketchy. In fact, plaintiff is merely grasping at straws. To highlight this, Armstrong took plaintiff's deposition before he had a chance to inspect Armstrong's documents.

In his first deposition, the plaintiff emphasized his "rattling off" (SD 17)" the name Thomasville during one of his initial meetings with Armstrong in August 1966. Then, in his second deposition, apparently realizing that even at common law that no finder's fees results from the mere suggestion of a name,** the plaintiff seemingly switched strategy, and sought to rely on some alleged meeting he arranged in March 1967 (SD 11, 12, 134-135, 149-150, 152, 180), However, this alleged March 1967 meeting would have been over one year and four months after Armstrong's initial contact with Thomasville and after four meetings between Armstrong and Thomasville principals had already

*SD refers to the indicated page in Mr. Samuels' deposition.

**Towers v. Doroshaw, 5 Misc.2d 241, 159 N.Y.S.2d 367 (1957).

occurred.

The following is a description of plaintiff's real relation to the Thomasville acquisition. At plaintiff's first meeting with Armstrong, he was unequivocably told that Armstrong was already actively pursuing Thomasville and would continue to independently pursue Thomasville and that Thomasville was not a part of any future contract with plaintiff. In the following months, discussion of Thomasville with the plaintiff was limited to comparisons with other possible acquisitions that plaintiff submitted. The plaintiff never encouraged the Thomasville deal. On the contrary, plaintiff actually discouraged Armstrong's interest in Thomasville, because plaintiff realized that if Armstrong acquired Thomasville, instead of one of the companies he submitted, he would not be entitled to any finder's fees.

As plaintiff suspected that Armstrong's principal interest centered on Thomasville, plaintiff modified his position. Knowing he would not be entitled to finder's fees for the large Thomasville acquisition, plaintiff unsuccessfully attempted to persuade Armstrong, and then in turn Thomasville, that he would be needed for negotiations. To Armstrong, he tried to sell himself as

negotiator on the grounds that he was on close terms with the President of Thomasville, Thomas Finch, and that, for this reason, only he could negotiate favorably with Thomasville. Plaintiff contended this despite the fact that plaintiff admittedly had met Mr. Finch only once previously at a large Brandeis testimonial dinner at which time they exchanged a few inconsequential words. Of course, this offer was rejected by the officers of Armstrong, who, by this time had met Mr. Finch several times and were on good terms with him.

When this failed, plaintiff, without Armstrong's authorization or approval, decided to approach Mr. Finch, suggesting that he represented Armstrong, in an attempt to get Thomasville to start negotiating through him. However, since Mr. Finch and other Thomasville officers had just visited the Armstrong plant and had discussions with Armstrong officials, Mr. Finch was suspicious of plaintiff and rebuffed.

It is clear, then, from this sequence of events that the plaintiff did not initiate contact with Thomasville, arrange any meetings between Armstrong and Thomasville, or assist negotiations at any time.

It also should be pointed out that, apart from

the finder's fee claim, plaintiff is not claiming that he participated in the Thomasville negotiations in any way. On the contrary, and by the conclusive judicial admission in the complaint, plaintiff did not participate in any negotiations in connection with Thomasville.

In connection with the acquisition of B. T. Babbitt, the plaintiff did find Babbitt. He has been paid the full fee under the Contract for an acquisition "found and negotiated and consummated", although he only "found" Babbitt. Moreover, plaintiff's acceptance of this fee operated as an accord and satisfaction.

The following chronology of significant events will assist the court in following the development of Armstrong's relationship with Thomasville.

II

CHRONOLOGICAL SUMMARY

Sometime in 1965 - Samuels' Alleged First Meeting With the President of Thomasville

At a large Brandeis testimonial dinner in 1965, plaintiff was allegedly introduced to the President of Thomasville, Thomas Finch.*

* Besides Mr. Finch, now a Vice President of Armstrong, the only Armstrong personnel connected with this case are Mr. Binns, then a Vice President and Chairman of Armstrong's Acquisition Committee, Mr. Banzhaf, then Vice President and member of Armstrong's Acquisition Committee, and Mr. Donnelly, then Armstrong's Treasurer.

November 23, 1965 - Armstrong's First Visit to Thomasville

Members of Armstrong's Acquisition Committee, including Max Banzhaf, visited the Thomasville plant.

January 21, 1966 - Armstrong's Second Visit to Thomasville

Armstrong officials toured Thomasville's showrooms and manufacturing facilities and visited the executive offices. During this visit, Max Banzhaf, a member of Armstrong's Acquisition Committee, and Mr. Thomas Finch, the President of Thomasville, met and discussed the furniture industry, including the possibility of Armstrong entering the furniture industry through either acquisition or internal expansion.

July 22, 1966 - Samuels' First Visit to Armstrong

Plaintiff visited Armstrong's offices in Lancaster, Pennsylvania, and had lunch with Jim Binns, Armstrong's Vice President and Chairman of the Acquisition Committee. At lunch, Mr. Binns explicitly told Mr. Samuels that Thomasville was already being actively purused by Armstrong, that Armstrong would continue to pursue Thomasville independently and without any assistance from Mr. Samuels, and that Thomasville would not be a part of any agreement

with Mr. Samuels. Apart from this, Thomasville was not specifically discussed to any extent at this meeting. Moreover, Mr. Binns specifically told Mr. Samuels that he had no authority to use Armstrong's name without its prior approval.

August 10, 1966 - Samuels' Second Visit to Armstrong

On Mr. Samuels' second visit to Lancaster, he mentioned his contacts within different industries and referred to a number of companies in a broad and non-specific sense as examples of acquisitions Armstrong would or would not be interested in.

Mr. Samuels also discussed his proposed relation with Armstrong. At first, the plaintiff was opposed to a written agreement, but was persuaded by Armstrong to draft an agreement which he mailed to Armstrong on August 12, 1966. Although Armstrong performed some minor editing, it was plaintiff's draft that ultimately formed the basis of the Contract between Armstrong and Samuels upon which the complaint is based.

August 25, 1966 - Date of the Contract

This is the date of the Contract and plaintiff's third visit to Armstrong's offices.

While in Lancaster, Mr. Samuels discussed his basic approach to acquisitions - purchasing with the ultimate objective of profit by resale at a higher price - and cited numerous examples. He was informed that Armstrong was not seeking short-swing profits, but long-term growth possibilities.

Circa October 1, 1966 - Armstrong's Third Meeting With Thomasville Was Arranged

At Mr. Banzhaf's (chairman of Armstrong's acquisition committee) request, Mr. Donnelly, Armstrong's Treasurer, arranged a meeting with Thomasville's President, Mr. Finch at Wachovia Bank and Trust Company.

October 10, 1966 - Date of Plaintiff's Letter Discouraging Thomasville

This is the date of the plaintiff's letter to Armstrong recommending acquisition terms for a company that plaintiff had submitted, with a handwritten note discouraging Thomasville:

> "And since it is the least likely of 'deals' you might aborn [sic] it. (Emphasis in original).

October 10, 1966 - Samuels Attempted Telephone Call to Finch

While plaintiff sought to discourage Armstrong's interest in Thomasville the plaintiff endeavored

to contact Mr. Finch, in an attempt to interject himself in the Thomasville situation. A "While you were Out" telephone note to Finch, written by a switchboard operator and Mr. Finch's secretary, indicates that Mr. Samuels unsuccessfully attempted to call Mr. Finch twice on October 10, and "will call again during Market for appointment."

October 18, 1966 - Armstrong's Third Meeting With Thomasville

Representatives of Armstrong and Thomasville met for the third time at the Wachovia Bank main office in Winston-Salem, N.C. Mr. Banzhaf of Armstrong made a lengthy presentation from Armstrong's exhaustive studies of the furniture industry recommending and proposing a merger between Armstrong and Thomasville. Thomasville was now Armstrong's first choice for acquisition. Mr. Finch, President of Thomasville, was interested in the proposed combination with Armstrong, and felt an obligation to his shareholders to further study the proposal. He accepted Mr. Banzhaf's invitation to visit Armstrong's offices in Lancaster for further discussions.

January 4-6, 1967 - Armstrong's Fourth Meeting With Thomasville

Thomasville's officers, including Mr. Finch, visited Armstrong's offices in Lancaster. They toured the Armstrong facilities and met with its management for the purpose of discussing a merger. Meetings between officers of the two companies took place throughout the visit.

On January 6th, Mr. Finch was taken to Philadelphia via the Armstrong plane and from there he traveled on to Chicago.

January, 1967 - Samuels Introduces Himself to Finch

Immediately following the Armstrong visit, Mr. Finch attended the January furniture market in Chicago.

While at the Thomasville showroom at the American Furniture Mart Building on Lakeshore Drive, Mr. Finch was approached by the plaintiff. Mr. Samuels introduced himself and explored Thomasville's interest in being acquired by another firm, later mentioning Armstrong's name specifically. Since Mr. Finch had just met with Armstrong's top management in Lancaster,

he doubted that Mr. Samuels was authorized by Armstrong to make such an approach. Mr. Finch, therefore, told Mr. Samuels that Thomasville was not interested in pursuing that matter.

Shortly after Mr. Samuels approached him, Mr. Finch called Armstrong. After Mr. Finch disclosed that he had been approached by the plaintiff, Mr. Donnelly Armstrong's Treasurer, called Mr. Samuels and told plaintiff not to involve himself with Mr. Finch or Thomasville.

January
February 11, 1967 - The "Contract" Terminated

Error

Date of termination of the plaintiff's contract.

Late March 1967 - Plaintiff's Alleged Call to Finch

This is the only time plaintiff claims to have arranged a meeting between Mr. Finch and Armstrong by telephone call to Mr. Finch.

Mr. Finch has no recollection of any such call.

April 27, 1967 - Armstrong's Fifth Meeting with Thomasville

Meeting between Armstrong and Mr. Finch of Thomasville at the Barclay Hotel in Philadelphia. Once again, affiliation between the two firms was discussed.

August 24-25, 1967 - Armstrong's Sixth Meeting With Thomasville

Armstrong officers again visited Thomasville's headquarters and toured the Founders plant, a subsidiary of Thomasville.

November 10, 1967

Thomasville's directors decided not to affiliate with Armstrong. Mr. Finch so informed Mr. Binns by phone.

Mid-February, 1968 - Armstrong's Seventh Meeting With Thomasville

Mr. Banzhaf met Mr. Finch again at the Wachovia Bank and Trust Company seeking Finch's advice on other possible acquisitions by Armstrong in the furniture industry.

December 11, 1967

Date of the Bill of Sale of B. T. Babbitt.

December 12, 1967

Mr. Samuels was paid $9,000 for his assistance in the Babbitt purchase.

May 6-8, 1968 - Finch Reopens Merger Possibilities

Due to changed circumstances within the furniture industry, particularily mergers of Thomasville's competitors, Thomasville decided to reopen merger discussions with Armstrong.

During a weekend with Mr. Finch at Sea Island, Georgia, Mr. Banzhaf of Armstrong's Acquisition Committee again discussed merger possibilities between Armstrong and Thomasville.

June 4 and 5, 1968

Officers of Thomasville visited Armstrong headquarters, meeting management and touring their facilities.

June 17, 1968

Mr. Banzhaf met Mr. Finch in Chicago and further discussed affiliation.

June 30-July 2, 1968

Officers of Armstrong and Thomasville met for final negotiations at Sea Island. An agreement was reached, and all flew to Winston-Salem to conclude the details of the affiliation.

III

APPLICABLE LAW

A. Recovery Under The Contract

The Contract, which was dated August 25, 1966 and terminated February 11, 1967, set forth the terms of the relationship between Armstrong and the plaintiff, and provided for the payment of a fee to plaintiff in specific enumerated situations hereinafter discussed.

Generally, the Contract provided that either party could terminate the Contract on 30 days written notice. Further, Armstrong was not liable for any disbursements or expenses incurred by plaintiff, and no fee or other compensation was payable unless and until consummation of the acquisition in accordance with the following terms.

Under Section 6, for acquisitions that were "found and negotiated and consummated" on behalf of Armstrong, a fee of 3% of the total consideration paid for the acquisition was payable. Upon the consummation of an acquisition that plaintiff had found and had been instructed to negotiate with, but at Armstrong's request had terminated his activities, the full 3% fee was also payable.

The plaintiff found Babbitt for Armstrong. Even though the plaintiff did not participate in the negotiations or consummation, Armstrong paid the plaintiff $9000, a full 3% of the consideration paid for Babbitt, as provided in Section 6, the day after the acquisition was consummated. Moreover, plaintiff's acceptance of the $9000 Armstrong check operated as an accord and satisfaction barring any further claims by plaintiff in connection with the Babbitt acquisition.*

A 2% fee was payable upon the consummation of an acquisition, if at Armstrong's request, plaintiff explored and negotiated an acquisition even though plaintiff himself did not find it, and even though subsequently Armstrong requested plaintiff to cease negotiating in its behalf.

For consultation services on acquisitions that plaintiff did not find, plaintiff's exclusive compensation was to be fixed by independent contract.

Under Section 4, however, no fee was payable for plaintiff's submission of a possible acquisition which had already come to Armstrong's attention. After being advised that Armstrong was already exploring such an acquisition, the plaintiff was to refrain from working on that acquisition. In other words, if Armstrong was already considering the acquisition, the plaintiff was not a finder, and not, therefore, entitled to any fee or any other compensation under the Contract.

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* Schuttinger v. Woodruff, 259 N.Y. 212, 181 N.E. 361 (1932); Honeysett v. White Co., 104 Pa. Super. 535, 159 A. 207 (1932).

In connection with the Thomasville acquisition, the plaintiff is not entitled to any fee under the Contract, because, under Section 4, Thomasville was never part of the Contract. The first time plaintiff met with Armstrong's officers, in July, 1966, he was unequivocally told that Armstrong was already actively pursuing Thomasville and would continue to do so independently of the plaintiff, and that Thomasville would not be part of any agreement with plaintiff. Plaintiff was warned to stay away from Thomasville a second time in January 1967.

Even if the Contract did not contain the express, exclusionary provisions in Section 4, plaintiff would still not be entitled to a finder's fee under the Contract, because he was not a "finder". Since the Contract itself does not specifically define "finder", the common law of the two jurisdictions having contacts with this case, New York and Pennsylvania, must be looked to.

B. The Common Law Definition of "Finder"

Under New York law, a finder is one who introduces or initially brings together the parties who later consummate a transaction. Simon v. Electrospace Corp., 32 App. Div. 2d 62, 66, 299 N.Y.S.2d 712, 717 (1969); Ames v. Ideal Cement Co., 37 Misc. 2d 883, 886, 235 N.Y.S.

2d 622, 625 (1962), Southack v. Lane, 32 Misc. 141, 144, 65 N.Y.S. 629, 631 (1900); Knauss v. Gottfried Krueger Brewing Company, 142 N.Y. 70, 36 N.E. 867 (1894). This initial bringing together or introduction must have been accomplished so as to have "brought about' or 'procured' or 'caused'" the transaction. Duane v. Polk, 32 N.Y.S. 2d 568, 572 (1941); Karlin v. Keller, 137 Misc. 261, 242 N.Y.S. 188 (1930).

Since officers on Armstrong's acquisition committee had visited Thomasville twice and had been introduced to Mr. Finch even before plaintiff claims to any contact whatsoever with Armstrong, Mr. Samuels did not introduce or initially bring them together, much less cause the Thomasville acquisition.

It has been a standing rule in New York that a finder must do more than just supply a name:

> "In no case cited by the plaintiff has there been enforced an obligation to pay compensation to a 'finder' for the disclosure of a name alone, without an introduction or negotiations leading to an eventual transaction between the defendant and the concern suggested by the plaintiff."

Towers v. Doroshaw, 5 Misc. 2d 241, 249, 159 N.Y.S.2d 367 (1957). From this it is clear that, even if the plaintiff in the case at bar did suggest the name

"Thomasville" as he claims, plaintiff is not entitled to recover any finder's fee.

Pennsylvania law, like New York, provides that a finder* must, at least introduce or arrange the initial meeting between the parties who eventually consummate the transaction. Again, like New York law, in addition to arranging an initial meeting or introduction, the finder must prove he was the "procuring cause" of the transaction. Seligson v. Young, 189 Pa. Super. 510, 513, 151 A.2d 792 (1959), Schoenfeld v. Meeks, 166 Pa. Super. 101, 70 A.2d 377 (1950); Gersh v. Rolland, 285 Pa. 141, 131 A.723 (1926); Keys v. Johnson, 68 Pa. 42 (1871).

It is settled law that when a finder's first contact with a transaction is after the parties have already been introduced or meetings between the parties already have been arranged, no finder's fee results. Seligson v. Young, 189 Pa. Super. 510, 151 A.2d 792 (1959); Henderson v. Mellor, 72 P.L.J. 974 (1924); Mitchell v. Baldwin, 265 Pa. 148, 157, 108 A.605 (1919).

Again, since the Chairman of Armstrong's acquisition committee and other Armstrong officers had met

*Pennsylvania courts use this term interchangeably with the term "broker". C.D. Snyder Realty Co. v. Sherril-Noonan Inc., 261 F.2d 269 (3rd Cir. 1958).

twice with Thomasville and had been introduced to Mr. Finch before plaintiff even claims to have been in contact with Armstrong, plaintiff is not entitled to any finder's fees.

C. Quantum Meruit Recovery

Apart from the Contract, the plaintiff cannot recover finder's fees or any other compensation. Under common law, any and all recovery must be made pursuant to a specific contract. Day v. Dworman, 18 App. Div.2d 989, 238 N.Y.S.2d 529 (1963); Gellert v. Dick, 277 N.Y. 123, 13 N.E.2d 603 (1938); Seckendorff v. Halsey, Stuart & Co., 234 App.Div. 61, 254 N.Y.S.250 (1931); rev'd solely as to Halsey, Stuart & Co., 259 N.Y. 353, 182 N.E. 14 (1932); Knauss v. Krueger, 142 N.Y. 70, 36 N.E. 867 (1894).

Moreover, even if a common law right to recovery did exist, plaintiff contracted it away under Sections 1, 2 and 4 of the Contract. These sections provide that Armstrong is not liable for expenses or any other compensation until plaintiff satisfies the terms for recovery specified in the Contract.

IV

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Proposed Findings of Fact

1. The defendant, Armstrong Cork Company ("Armstrong") is, and at all times mentioned in the complaint herein was, a corporation duly organized and existing under the laws of the State of Pennsylvania.

2. Plaintiff, Harry Samuels, is, and was at all times mentioned in the complaint, a citizen and resident of the State of New York.

3. Under a finder's contract (the "Contract") between the plaintiff and defendant, dated August 25, 1966, no finder's fees, expenses, or other compensation were payable to plaintiff unless and until certain conditions therein were satisfied. Section 6 of the Contract provided for a finder's fee of 3% of the total consideration paid for an acquisition by Armstrong if such acquisition was "found and negotiated and consummated" by the plaintiff.

4. In connection with Armstrong's acquisition

of B. T. Babbitt, 3% of the total consideration paid by Armstrong, $9000, was paid to and accepted by plaintiff for finding B. T. Babbitt, Inc. even though plaintiff did not negotiate or consummate the acquisition.

5. Section 4 of the Contract provided that no finder's fee was payable for plaintiff's submission of a possible acquisition which had already come to Armstrong's attention. After being advised that Armstrong was already exploring such an acquisition, the plaintiff was to refrain from working on that acquisition.

6. Prior to the execution of the Contract, the members of Armstrong's Acquisition Evaluation Committee had visited Thomasville Furniture Industries, Inc.'s ("Thomasville") manufacturing facilities twice, and, during their second visit had met with the President of Thomasville.

7. When plaintiff first met Armstrong's officers in July of 1966 and prior to the execution of the Contract, plaintiff was told by Armstrong's officers that Thomasville was being actively pursued by Armstrong, that Armstrong would continue to pursue Thomasville independently and without assistance from plaintiff, and that Thomasville would not be a company covered under the Contract.

8. At no time did the plaintiff introduce any officers of Armstrong and Thomasville or arrange any meetings between Armstrong and Thomasville.

9. At no time did plaintiff "find" Thomasville within the meaning of the Contract.

10. At no time did plaintiff "negotiate" Armstrong's acquisition of Thomasville.

11. At no time did plaintiff "consummate" Armstrong's acquisition of Thomasville.

Proposed Conclusions of Law

1. The relationship between the defendant, the Armstrong Cork Company, and the plaintiff, Harry Samuels, was governed by the contract (the "Contract") dated August 25, 1966.

2. Defendant, Armstrong Cork Company, fully complied with its obligations under the Contract.

3. The plaintiff has been fully compensated under the Contract for finding the B. T. Babbitt, Inc. acquisition for Armstrong.

4. Accord and satisfaction bars plaintiff from any fee in connection with B. T. Babbitt, Inc.

5. The defendant is not liable to the plaintiff under the Contract for a finder's fee or any other compensation by reason of Armstrong's acquisition of Thomasville Furniture Industries, Inc.

6. Plaintiff may not recover against the defendant under the common law of Pennsylvania or New York for work, labor or services by reason of Armstrong's acquisition of Thomasville Furniture Industries, Inc. and B. T. Babbitt, Inc.

7. Defendant, Armstrong Cork Company is entitled to a judgment dismissing the complaint of the plaintiff against it with costs.

Respectfully submitted,

Chadbourne, Parke, Whiteside
& Wolff
Attorneys for Defendant
25 Broadway
New York, New York 10004

Of Counsel
Paul G. Pennoyer, Jr.
Bruce W. Keihner

EXHIBIT A

List of Defendant's Witnesses

James H. Binns President of the Armstrong Cork Company ("Armstrong") and Chairman of Armstrong's Acquisition Evaluation Committee	The substance of Mr. Binns' testimony will be that Thomasville Furniture Industries, Inc. ("Thomasville" was never included in the finder's contract of August 25, 1966 (the "Contract"). Mr. Binns specifically told the plaintiff in July 1966 that Armstrong was already interested in Thomasville as a possible acquisition, that Armstrong would continue to investigate the Thomasville situation independently of the plaintiff, and that Thomasville would not be a company covered under the Contract with the plaintiff. Further, Mr. Binns will testify that, to his knowledge, the plaintiff never made any introductions between Armstrong and Thomasville, arranged any meetings or participated in negotiations in any way.
Max Banzhaf Vice-President and Treasurer of Armstrong and member of the Acquisition Evaluation Committee	Mr. Banzhaf will testify that as member of Armstrong's Acquisition Evaluation Committee he and other Armstrong officers visited Thomasville twice and met with the President of Thomasville six months before the plaintiff's first meeting with Armstrong's officers in July 1966. In addition,

Max Banzhaf (cont'd)	Mr. Banzhaf will testify that, to his knowledge, the plaintiff never made any introductions or arranged any meetings between Armstrong and Thomasville, or participated in negotiations in any way.
F. S. Donnelly, Jr. Vice President and General Manager, International Operations, Armstrong	Mr. Donnelly's testimony will be that Thomasville was never covered under the Contract with plaintiff, that he specifically told the plaintiff to stay out of the Thomasville situation, and that, to his knowledge, plaintiff never made any introductions or arranged any meetings between Thomasville and Armstrong or participated in negotiations in any way.
Thomas A. Finch President of Thomasville; and Senior Vice-President of Armstrong	Mr. Finch will testify that he had met members of Armstrong's Acquisition Evaluation Committee six months before plaintiff had any contact whatsoever with Armstrong, and that the plaintiff did not introduce him to any Armstrong personnel, arrange any meetings between Armstrong and Thomasvill or participate in negotiations in any way.

EXHIBIT B

August 25, 1966

Mr. Henry G. Samuels
1901 Broadway
New York, New York 10023

Dear Mr. Samuels:

As a result of your recent visit with Messrs. Womack and Dixon and the writer, we are submitting the following terms under which you will act as a finder, broker or a negotiator for the solicitation of, or other action with reference to, proposals involving companies for possible acquisition by us.

1. We will not be liable for any disbursements or expenses of any kind or nature made or incurred by you in your search for companies for possible acquisition by us, even though done as a result of a suggestion from us.

2. No fee or other compensation shall be due and payable to you in any situation unless and until the transaction, based upon an acquisition found or negotiated by you, is actually closed or consummated. The stage of negotiations reached at the time of any failure of a deal shall be immaterial so far as a fee is concerned. In other words, no fee will be payable to you when the transaction is not closed, irrespective of whether the failure to close is due to some act or failure to act on our part or on the part of a prospective seller.

3. If and when you submit a proposition to us for consideration, we will, within fourteen (14) days after our receipt of such submission, inform you of our interest, if any, therein and of any further action, such as supplying additional information or negotiating, which we wish to have done with respect thereto.

4. In the event you submit a possible acquisition which has theretofore been considered by us, even though no negotiations with respect thereto had taken place, and irrespective of the source thereof (suppliers, customers, bankers, employees, outside directors, other brokers or any other source), we will advise you promptly of that fact and,

the possible contingency referred to in the preceding sentence in our favor, and, if the other conditions of that sentence are met, we will pay you the full fee provided in paragraph 6.

9. In our [illegible]'s operation under this agreement, we undertake to do [illegible] any information furnished to us and [illegible]. While we will [illegible] all submissions [illegible], we cannot agree to be [illegible] or be a party to any confidential relationship.

10. Either of us may terminate this agreement at any time by giving the other at least thirty (30) days' written notice of intent to terminate. It is [illegible] we would not, in bad faith, exercise our right to terminate simply to avoid the payment of a fee to you in accordance with this agreement.

This letter is being addressed to you in duplicate. If acceptable to you, will you please indicate your acceptance by signing and returning one copy to us.

Very truly yours,

ARMSTRONG CORK COMPANY

F. S. Donnelly, Jr.
Treasurer

Accepted:

/s/ Harry S. Crumels
Harry S. Crumels

Date: 8/25, 1966

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thereafter, you will refrain from working on our behalf on that deal. In any such case, if at any time we consummate a transaction with reference to a company so involved, we will have no obligation to you for a fee or other compensation or expense reimbursement.

5. In the event we become interested in a possible acquisition or merger with a person other than you, and we instruct you to explore and investigate the same, we will, upon consummation of such a transaction, pay you two-thirds (2/3) of the fee set forth in the following paragraph 6. If the purchase of a possible acquisition referred to in the preceding sentence is smaller in size or similar to that for a fee or consideration will or may be payable by us, we may afford you the opportunity of dealing by mutual agreement with such other lesser or similar the amount of his fee or consideration; and, if agreement is reached, we will pay you the full fee set forth in paragraph 6 hereof and you will be responsible for the payment to him of the fee so fixed, thus discharging any Company liability to him on such account.

6. We will pay you as a fee a sum of money equal to three per cent (3%) of the total consideration paid by us for an acquisition found and negotiated and consummated by you on our behalf. In the event the said consideration shall be capital stock of our Company, the amount thereof for the purpose of computing your fee shall be based upon the closing price thereof on the New York Stock Exchange on the date of closing the transaction. Said fee shall be payable to you within fifteen (15) days after the closing. We reserve the option to arrange for the seller in any such transaction to pay your fee in accordance with this agreement.

7. There may be occasions when we would wish to consult with you in the general area of acquisitions or with reference to a specific acquisition emanating from a source other than you. We should like to feel free to call upon you, with the understanding that your sole compensation in each such case would be fixed by mutual agreement prior to your rendering any such consulting services to us.

8. If we consider a possible acquisition received from a source other than you, and, after instructing you to negotiate the same for us, we instruct you to terminate your activities in connection therewith, we will pay you two-thirds (2/3) of the fee provided in paragraph 6 if we consummate that acquisition within a period of twenty-four (24) months after the date of our said instruction to you to terminate your activities. If

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

HARRY S. SAMUELS, :

Plaintiff, :

-against- : 69 Civ. 3022

ARMSTRONG CORK COMPANY, :

Defendant. :

----------x

Before:

HON. RICHARD H. LEVET,

District Judge

New York, N. Y.
September 10, 1973

APPEARANCES:

SHEA, GOULD, CLIMENKO & KRAMER, ESQS.
Attorneys for Plaintiff
BY: MICHAEL C. LESCH, ESQ., of Counsel

CHADBOURNE, PARK, WHITESIDE & WOLFF,
Attorneys for Defendant
BY: PAUL PENNOYER, JR.,
and
BRUCE KEHNER, ESQ., of Counsel

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(In chambers.)

(Discussion off the record.)

THE COURT: On the record. Under paragraph 18 of the answer, called the second defense, it is stated that the complaint fails to state a claim upon which relief can be granted.

Do you press that?

MR. PENNOYER: We don't press that, your Honor.

THE COURT: It is stipulated that the defense is withdrawn.

Secondly, under 19, the so-called third defense, each claim alleged in the defense is barred by the applicable statute of frauds. Do you press that?

MR. PENNOYER: No, we withdraw that.

THE COURT: That is withdrawn.

What about this accord and satisfaction? Do you press that?

MR. PENNOYER: We press that.

THE COURT: In brief, what do you claim on that?

MR. PENNOYER: May I go over the facts briefly? I think it will help put it in perspective.

THE COURT: Was there an instrument or paper?

MR. PENNOYER: Yes.

THE COURT: Where is it? Produce it.

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MR. PENNOYER: I didn't bring it with me. Mr. Samuels had a written contract with Armstrong --

THE COURT: Don't you have a copy of it?

MR. PENNOYER: Yes, I do.

THE COURT: This is a copy of the alleged accord and satisfaction?

MR. PENNOYER: No, this is the alleged contract.

THE COURT: I want that.

MR. PENNOYER: It is the payment of $9,000 to Mr. Samuels by reason of his finding of the Babbitt transaction. There are two transactions involved here, the Thomasville Furniture Company, which Armstrong acquired, and the Babbitt Company, which Armstrong acquired, and it was agreed with Mr. Samuels that he found Babbitt.

THE COURT: You assert an oral contract of accord and satisfaction, is that it?

MR. KEIHNER: A letter.

THE COURT: Where is the letter?

MR. KEIHNER: The clerk called me up for this conference, and I specifically asked him if there were any documents we should bring, and the clerk told me no.

THECOURT: What clerk told you no?

MR. KEIHNER: The clerk who called up from the office.

THE COURT: I don't think he should have to tell yo to bring a document. You don't have a copy of the letter?

MR. KEIHNER: No, your Honor.

THE COURT: This is useless.

MR. KEIHNER: There are so many documents in this file --

THE COURT: I know, but you are defending an action. The number of documents in the file doesn't mean a thing, unless you are crying sort of an inability to meet your defense.

What do you say it said? When was it dated, when was it given, when the payment was made? Have you got any facts about it in mind that are available here?

MR. KEIHNER: Payment was made in December of 1967.

THE COURT: Was there a check passed?

MR. KEIHNER: Yes, your Honor. There was.

THE COURT: Do you have a copy of the check?

MR. KEIHNER: Yes, in the office.

THE COURT: But not here.

What do you say is the reason for this defense? How can you make out a defense of accord and satisfaction? Is payment of $9,000 conceded?

MR. LESCH: I believe it is.

THE COURT: All right. Suppose $9,000 was paid. Are there any papers to support what it was supposed to be for except this letter?

MR. KEIHER: Yes, your Honor.

THE COURT: What? Any papers?

MR. PENNOYER: This letter, the letter addressed to Mr. Samuels.

THE COURT: Is that all, Mr. Pennoyer?

MR. PENNOYER: Yes.

THE COURT: What does the letter cover, what does it say, if you know? This is a useless conference. I think I will adjourn the conference. You should come with your papers. I guess you better make it next Monday morning, 10:00, and bring your papers and instruments, the documents, which support your defense.

Can you tell the gist of the complaint. There are four actions.

MR. LESCH: Two are in contract, two in quantum mer

Mr. Samuels claims he is entitled to $4,300,000, which is three percent of the purchase price of $160 million.

THE COURT: The first one relates to the acquisition of Thomasville?

MR. LESCH: Yes.

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THE COURT: What do you have on proof?

MR. LESCH: All I can say is what I read in the memorandum coming down here but I understand there is a written commission agreement dated August 25, 1966.

THE COURT: Do you deny a written commission contract?

MR. PENNOYER: No.

THE COURT: What is wrong with the action?

MR. PENNOYER: It wasn't covered by the contract, and the man didn't do anything under the contract.

THE COURT: Do you have a copy of the contract?

MR. PENNOYER: Yes, it is attached to a trial brief. This is the contract.

THE COURT: What do you say this covers, if you know, Mr. Pennoyer?

MR. PENNOYER: Paragraph 6 says that Samuels is entitled to a three percent commission if he finds, negotiates and consummates a transaction, and it is our position -- let me say the other paragraphs also involve lesser degrees of service. It is our position that Samuels neither found nor negotiated nor consummated, and I say that because before the date of that contract Armstrong had already been to visit Thomasville twice in the previous year.

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THE COURT: You say the plaintiff did nothing to consummate it?

MR. PENNOYER: That's correct. I am going by his own story juxtaposed against the actual chronology.

MR. KEHNER: Under Section 4 there is no fee payable if plaintiff's submission of possible acquisition have already come to Armstrong's attention.

THE COURT: Is that what it says in paragraph fourth?

MR. KEHNER: Section 4, yes.

THE COURT: Do you want to say anything on that, Mr. Lesch?

MR. LESCH: I suppose we have a lot to say but as I said to your Honor off the record Mr. Gould who is going to try this case was called on an emergency to Washington, and Mr. Shelton, who knows something about it couldn't be here.

THE COURT: I simply want to do what we can and then we will adjourn.

Now, the second cause of action, what is that about?

MR. PENNOYER: That is quantum merouit on the Thomasville transaction.

THE COURT: No oral or written contract at all?

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MR. PENNOYER: No, that would be outside any oral or written contract.

THE COURT: Was there performance?

MR. PENNOYER: There was not. He neither found nor negotiated nor consummated.

MR. LESCH: These are the same issues as relate to the first cause of action, except they are on quantum merouit. It is an alternate theory on the first cause of action.

THE COURT: What company?

MR. LESCH: The same company and the same work.

THE COURT: The same basis?

MR. LESCH: Yes.

THE COURT: What is the third?

MR. PENNOYER: The third and fourth relate to the Babbitt transaction.

THE COURT: What is the third?

MR. PENNOYER: The third is under the contract. Briefly, we admit that Samuels found Babbitt. We have not admitted that he negotiated or consummated but we nevertheless paid him three percent of $300,000 which was the payment made.

THE COURT: Three peecent of how much?

MR. PENNOYER: Of $300,000, or $9,000. And that

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is the subject of a letter to which we earlier referred and we don't have with us. Samuels is claiming that subsequent to that Armstrong paid more to the Babbitt Company for what they got from Babbitt for the acquisition.

THE COURT: Did it?

MR. PENHOYER: It is my understanding they did not, and we haven't been able to develop that.

THE COURT: Do you know anything about that?

MR. LESCH: Yes. My understanding is that the agreement says as follows with respect to the purchase prise: "The purchase price payable by Armstrong shall be, A, the sum of $300,000 for all of the assets and rights to be conveyed to the hereunder except inventory, so that the inventory is excluded from the $300,000 purchase price and, B, with respect to inventory the value hereof determined in accordance with Exhibit B hereto, and Exhibit B is a list of prices."

THE COURT: What does that make the base amount against which some percentage might be drawn? As it is claimed, at least?

MR. LESCH: My understanding that our claim was that it was $2 million -- that is, the contract price when inventory was included was $2 million.

THE COURT: How much was the inventory?

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MR. LESCH: That would make the inventory $1,700,000.

THE COURT: Thatwould leave the net $300,000?

MR. LESCH: That would mean that three percent of that would be$9000.

MR. PEPPOYER: The trouble is we haven't been able to develop any additional payment. It was never developed in discovery, and we have come up against a dead end every time we tried to figure out what additional monies were paid let alone what they were paid for.

THE COURT: I should think you would know.

MR. PEPPOYER: I should think I should, your Honor, but I have been pressing for this and haven't been able to make it.

THE COURT: These payments were made by your defendant, weren't they?

MR. PEPPOYER: Certainly, if they were made. You have been into it. Will you explain it?

MR. KEIHER: Your Honor --

THE COURT: Is there any indication this $9,000, or three percent of $300,000 was indicated as a payoff for the first two causes of action?

MR. PEPPOYER: No, there is no relationship.

THE COURT: How do you draw it then? You don't

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claim that?

MR. PENNOYER: We don't claim that the $9,000 was in accord and satisfaction of the Thomasville counts.

THE COURT: What do you claim?

MR. PENNOYER: That it was in accord and satisfaction of the Babbitt transaction.

THE COURT: Is that in dispute?

MR. LESCH: I am sure it is in dispute, yes.

THE COURT: If it is, then there is a question of fact.

The fourth cause of action, what is that, just more about Babbitt?

MR. PENNOYER: Quantum merouit about Babbitt.

THE COURT: That's all for now then.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------X

HARRY S. SAMUELS, :

Plaintiff, :

- against - : 69 Civ. 3022

ARMSTRONG CORK CO., :

Defendant. :

----------X

B e f o r e:

HON. RICHARD H. LEVET,

District Judge

New York, N. Y.
September 17, 1973

Appearances:

SHEA, GOULD, CLIMENKO & KRAMER, Esqs.
Attorneys for the Plaintiff
BY: MICHAEL LESCH, Esq.
LESTER YASSKY, Esq.

CHADBOURNE PARKE WHITESIDE & WOLFF, Esqs.
Attorneys for the Defendant
BY: PAUL PENNOYER, JR., Esq.

wc [2]

(In chambers)

THE COURT: I thought Mr. Gould was coming.

MR. LESCH: Since I first spoke to you, Mr. Gould assigned this case to me to try.

THE COURT: Are you going to take it?

MR. LESCH: Yes, I am going to take it.

THE COURT: Are you prepared to, at least outside of the hearing the Court, participate in any settlement negotiations?

MR. LESCH: Yes.

THE COURT: Have you done so already, or do you want to go out and do so now?

MR. LESCH: Well, I spoke to Mr. Pennoyer last time. Is there anything more that you want to say?

THE COURT: I don't want to go into it myself, because it is a nonjury case. I don't want to hear the numbers. But if you want to go outside --

MR. PENNOYER: We have never discussed settlement with your predecessors, or indeed anybody, and in fact I have no money. So it makes it --

THE COURT: You have no money?

MR. PENNOYER: No money.

THE COURT: The corporation has no money? I don't expect you to have any.

we [3]

Do you want to discuss it briefly with counsel outside?

MR. PENNOYER: Well, maybe it would be easier if Mr. Lesch got into the case a little bit. But I think since --

MR. LESCH: I am now familiar , since we last --

THE COURT: He says he is now familiar with it.

MR. LESCH: Yes, I have read all the depositions.

THE COURT: He has instructions from Mr. Gould, I take it?

MR. LESCH: That is correct, yes. I read all the depositions and the exhibits in the case, and I am familiar with it now.

MR. PENNOYER: Well, our position is very simple. Your Honor will recall there are the two acquisitions or matters, the Thomasville Furniture and the Babbitt, Thomasville being Count 1 and 2, and Babbitt 3 and 4.

THE COURT: Yes. Do you press all these?

MR. LESCH: Yes.

MR. PENNOYER: And on the Thomasville, our position is that Samuels, plaintiff, neither found, negotiated or consummated the Thomasville deal, and there just isn't anything to talk about.

On the Babbitt, we have paid in $9,000, and one of the defenses, affirmative defenses, is accord and satisfaction

wc [5]

Have you passed out those instructions relative to post-trial papers?

MR. LESCH: Yes, we have those.

THE COURT: You each have those?

MR. PENNOYER: Do I understand your HOnor likes those before the trial starts?

THE COURT: No, those are post-trial.

MR. PENNOYER: Right.

THE COURT: I would like a very short memorandum about any particularly evidentiary questions before trial. Confine it to evidentiary questions.

MR. PENNOYER: We have filed a --

THE COURT: I will waive any request for proposed findings of fact and so forth before trial. They are not too helpful, because they all have to be tied in to either some exhibits or some testimony.

MR. PENNOYER: We have both submitted trial memoranda.

THE COURT: You have submitted a trial memorandum?

MR. PENNOYER: Both of us have.

THE COURT: Fine. All right, about the 9th. It may not be exactly the 9th; it has to depend on the cases which go before it. Is there any chance that it might be reached before the 9th?

wc

THE CLERK: I don't believe so, Judge.

THE COURT: You had better take it to follow a criminal case, United States v. Kim. If those settle, I will call you in. I don't give firm dates for future trials. If I did, that might lessen considerably the amount of accomplishment.

MR. PENNOYER: We have four people coming up from Lancaster.

THE COURT: Pennsylvania?

MR. PENNOYER: Yes, sir.

THE COURT: Well, that is not a foreign country. All right, unless you got some problems.

MR. LESCH: No.

THE COURT: We will call you in when we are ready.

MR. PENNOYER: It will be about the 9th?

THE COURT: We will call you as soon as we know.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

HARRY S. SAMUELS, :

Plaintiff, :

-against- : 69 Civ. 3022

ARMSTRONG CORK COMPANY, :

Defendant. :

----------x

October 9, 1973
10:00 a.m.

BEFORE:

HON. RICHARD H. LEVET,

District Judge

APPEARANCES

Messrs. SHEA, GOULD, CLIMENKO & KRAMER
Attorneys for the Plaintiff
BY: MICHAEL LESCH, ESQ.

Messrs. CHADBOURNE, PARK, WHITESIDE & WOLFF
Attorneys for the Defendant
BY: PAUL PENNOYER, ESQ.
BRUCE W. KEHNER, ESQ.

gawe [2]

(Case called.)

MR. LESCH: Plaintiff ready.

MR. PENNOYER: Defendant ready.

THE COURT: I want to ask a few questions before we take any testimony.

Mr. Lesch, is there a written contract as to the Thomasville phase of this?

MR. LESCH: There is a written finder's fee contract and there is a merger agreement between Thomasville and Armstrong, your Honor.

THE COURT: Is there coming up proof on behalf of the plaintiff that the plaintiff did something to bring about the Thomasville phase?

MR. LESCH: Yes.

THE COURT: I see.

One more question. I will ask this of defense counsel, Mr. Pennoyer.

Is this claim of accord and satisfy in writing?

MR. PENNOYER: No, it is represented by a check which was delivered to the plaintiff.

THE COURT: Is it necessary--I don't believe it is--to have a written instrument?

MR. PENNOYER: Its opposition is not necessary.

THE COURT: Do you agree with this last matter,

gawe [3]

Mr. Lesch?

MR. LESCH: No, your Honor.

THE COURT: What requires writing? What is the authority for that? What I am driving at, obviously if there is a good accord and satisfy, there is no need of our standing around here four days trying this case.

MR. LESCH: I think the transmittal letter for the $1,000 check makes it clear that that check related only to--

THE COURT: Are you ready, both sides, on the claim of accord and satisfy? Are you ready, Mr. Lesch?

MR. LESCH: Yes.

THE COURT: Mr. Pennoyer?

MR. PENNOYER: Yes, your Honor.

THE COURT: I will hear that first.

MR. PENNOYER: Before we start, your Honor--

THE COURT: Anything wrong with that?

MR. LESCH: I think the accord and satisfy claim--I'm not sure, but I think it relates entirely to the Babbitt transaction; is that right?

MR. PENNOYER: It does.

THE COURT: It relates only to Babbitt?

MR. PENNOYER: That's correct, sir.

THE COURT: That cut's our case in two at least.

gawe [4]

MR. LESCH: Very well. The major transaction is Thomasville.

THE COURT: If it is so obvious that it should be accepted as a complete accord on Babbit, I will take it.

MR. PENNOYER: Before we start, your Honor, may I introduce Mr. Pulkrabek from Pennsylvania, from the Armstrong Company.

He's an attorney admitted to practice in Pennsylvania. I ask that he be permitted to sit.

THE COURT: Yes, there's no objection to his sitting here at least.

MR. LESCH: Certainly not, your Honor.

THE COURT: Who is the other gentleman?

MR. PENNOYER: Mr. Keihner, associate with me.

THE COURT: What is your name?

MR. KEIHNER; Bruce Keihner.

THE COURT: Who is this?

MR. PENNOYER: Mr. Yasky, my associate. Sitting with us is Mr. Samuels, the plaintiff.

THE COURT: All right. That's in order.

Proceed with the defendant's claim of accord and satisfaction, then, Mr. Pennoyer.

MR. PENNOYER: Shall I proceed?

THE COURT: Yes, that's what I said.

gawe [5]

MR. PENNOYER: For this plaintiff, I will call the plaintiff to the stand at this time. Mr. Samuels.

THE COURT: All right.

H A R R Y S A M U E L S, called as a witness by the defendant, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. PENNOYER:

MR. PENNOYER: Your Honor, I will first ask that there be marked as Defendant's first exhibit--

THE COURT: Show it to the clerk and have it marked for identification.

That is the process which we utilize.

MR. PENNOYER: I ask that it be, a contract dated August 25, 1966, as defendant's first exhibit for identification.

(Defendant's Exhibit A marked for identification.)

THE COURT: You may or may not take proof on its identity. Any objection, Mr. Lesch?

MR. LESCH: No.

THE COURT: All right. Mark it in evidence.

(Defendant's Exhibit A for identification received in evidence.)

MR. PENNOYER: I next ask that there be marked for

gawe Samuels - direct [6]

identification as Defendant's Exhibit B, letter from Mr. Samuels to Mr. Donnally dated October 24, 1966.

(Defendant's Exhibit B marked for identification.)

MR. PENNOYER: May I approach the witness, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. PENNOYER:

Q Mr. Samuels, I show you Defendant's Exhibit B for identification and ask if that is a letter you sent Mr. Donnally, that is a copy of a letter?

THE COURT: You don't need to read it if you recognize it.

A Yes, this is a letter that I wrote to Mr. Donnally.

MR. PENNOYER: I offer it in evidence at this time.

MR. LESCH: No objection.

(Defendant's Exhibit B for identification received in evidence.)

Q Mr. Samuels, Defendant's Exhibit B which I just showed you is a letter you wrote to Mr. Donnally of the Armstrong Cork Company, is that correct?

A Yes.

Q That is the letter by which you brought to the

gawe Samuels - direct [7]

attention of Armstrong Cork Company the possibility of acquiring Babbitt Company?

THE COURT: Are you objecting?

MR. LESCH: I object to the form of the question, your Honor.

THE COURT: Sustained. It speaks for itself.

I suppose that is the objection.

MR. LESCH: Yes, it is, your Honor.

MR. PENNOYER: All right.

Q Mr. Samuels, subsequent to your sending Defendant's Exhibit B to the Armstrong Cork Company, did you participate--

A Subsequent to what?

THE COURT: Listen, listen.

Q --to your sending Exhibit B to the Armstrong Cork Company, did you participate in any negotiations leading to the acquisition of the Babbitt Company?

MR. LESCH: I object to the form of the question.

THE COURT: Sustained.

I don't know what that has to do with this phase of it anyway.

This is solely the question of accord and satisfy.

Get to that.

MR. PENNOYER: I'm coming to it, your Honor.

THE COURT: You are going a long way, around three or four barns.

gawe Samuels - direct [8]

MR. PENNOYER: I will go directly, your Honor.

Q Mr. Samuels, did there come a time when there was a dispute between you and the Armstrong Cork Company regarding a finder's fee under the contract which is now Defendant's Exhibit A for the acquisition of the Babbitt Company?

MR. LESCH: Objection.

THE COURT: Sustained.

Get to the check and whatever oral proof there may be.

MR. PENNOYER: Your Honor, I would like to make an offer of proof. I wish to establish that there was a disputed amount under the contract.

THE COURT: I don't know why that shouldn't be allowed, counsellor.

MR. LESCH: I have no objection to a properly phrased question on that issue.

THE COURT: All right. Reframe your question, counsellor.

Q Mr. Samuels,--

THE COURT: Don't say what it was about, just say: Did you have a meeting with so and so, and when was it and who was there and who said what. I guess that's the way to approach it.

Q Did you have a meeting with Mr. Donnelly or anybody

gawe Samuels - direct [9]

from Armstrong concerning the amount of your fee for the acquisition of the Babbitt Company?

A Yes.

Q When did that meeting occur?

A Sometime in the latter part of December of 1966.

Q Where was the meeting?

A There was no meeting, it was a telephone conversation.

Q Between you and who?

A Donnelly, Mr. Donnelly. He was the treasurer--

THE COURT: Between you and Mr. Donnelly?

THE WITNESS: Yes. He was the treasurer of the Armstrong Cork Company.

THE COURT: All right.

Q You were here in New York at that time?

A Yes.

Q And the conversation was by phone?

A That's right.

Q What did Mr. Donnelly say to you and what did you say to him?

A Mr. Donnelly said, "Harry, it looks as though we are going to close this Babo deal and I would like to ask you to take a lower fee than that which I expressed in the contract."

gawe Samuels - direct (10)

I'd say "Why is that, Fred?"

He says, "Well, you attended only one meeting. You don't negotiate."

I said, "You didn't permit me to negotiate."

He says, "You didn't close the deal."

I said, "If you don't permit me to negotiate or close, how do you expect me to negotiate or close. You didn't let me know you were closing it."

He said, "it isn't much of a deal. I think you ought to take one per cent."

I said, "Fred, I will stand by the letter of the contract, and the contract says 3 per cent, and I spent a lot of time a lot of effort, a lot of money in submitting many, many deals to you, and since the small one closed only, I think I am entitlted to the 3 per cent."

THE COURT: How much was one per cent?

THE WITNESS: $3,000, Judge.

Q What was 3 per cent?

A $9,000, 3 per cent.

Q What occurred with respect to this matter after that conversation?

THE COURT: Is that all the conversation you had?

THE WITNESS: Judge, I talked to him at length daily almost around that period of time.

gawe Samuels - direct [11]

THE COURT: I'm not asking that.

Is that all the conversation that took place on this December occasion in 1966 by telephone?

THE WITNESS: Yes. I think there was some more said that is pertinent to this matter.

THE COURT: What was it and who said it?

THE WITNESS: Donnelly said, "You ought to take one per cent because the company feels that that is ample and sufficient for the work you did in this deal."

I said, "Fred, you offered me a per diem retainer of 500 or $1,000 a day to work for you on acquisitions."

I said, "No, I want what the contract says. That's all you are offering me now is $3,000." I said, "After five months of work?"

He said, "That's all the company wants to pay you."

I said, "I think you ought to tell the company that I stand by my contract."

Q How was the conversation left?

A That's the way it was left.

Q Didn't Mr. Donnelly tell you to think it over for a few days and call you back?

A No, I don't think so. I think we had another conversation afterwards, a few days later.

He said, "What are you going to do about that Babo?"

gawe Samuels - direct (12)

"I said, "As far as I am concerned, don't close the deal if you didn't close it because I am going to stand by my agreement of 3 per cent."

That was all there was to that.

Q Can you fix this second conversation by date?

A It must have been two or three days after the first conversation.

Q Would this be in the early part of January of 1967?

A No, I think it was the latter part of December.

Q That is, the second conversation you think was the latter part of December?

A That's right. That was disposed of very quickly. We never talked about it again until I got the check a year later. Almost a year later I got a check of $9,000 in the mail without any forwarding letter or anything.

Q Did you negotiate that check or cash it?

A I deposited it.

THE COURT: When did you receive it again?

THE WITNESS: I think it was sometime in December 1967.

THE COURT: $9,000. You say you deposited it?

THE WITNESS: Yes.

THE COURT: Did you have any other conversations about it with Donnelly?

THE WITNESS: No.

MR. PENNOYER: I ask that this letter be marked for identification, being a letter dated December 12, 1967 from Mr. Donnelly to Mr. Samuels.

(Defendant's Exhibit C marked for identification.)

Q Mr. Samuels, I show you Defendant's Exhibit C for identification and ask you if that is a letter to you from Mr. Donnelly dated December 12?

THE COURT: '67.

MR. PENNOYER: '67.

THE WITNESS: May I ask my counsel whether this was in the file, Judge?

THE COURT: No, look at it and see if you can tell. It doesn't make any difference what file it came from.

A I don't remember it, but it might be. It might be.

Q Do you remember--

THE COURT: That's an ambiguous answer.

A If it was in my file, I would say it was.

MR. PENNOYER: May I explain? This is our copy of the letter from our file.

THE WITNESS: There's no signature on here, Judge.

MR. PENNOYER: The question is--

THE COURT: If you want to introduce it against

the plaintiff here, you have to have some signature which would warrant its admission.

MR. LESCH: We have no objection to it.

THE COURT: All right, mark it in evidence. That's the simple solution.

(Defendant's Exhibit C for identification received in evidence.)

THE COURT: You say F. S. Donnelly, Jr., was treasurer?

THE WITNESS: Yes, sir. I don't know if he was treasurer at that time. He was treasurer when I negotiated with him, in '66.

THE COURT: Would it be conceded at the time of the writing of this letter, Mr. Lesch, that Donnelly was the treasurer?

MR. LESCH: If Armstrong so represents--

MR. PENNOYER: We do, sir.

MR. LESCH: Yes.

THE COURT: All right. Anything further?

MR. PENNOYER: Nothing further at this time, your Honor.

THE COURT: Cross.

gawe Samuels - cross [15]

CROSS EXAMINATION

BY MR. LESCH:

Q In your conversation with Mr. Donnelly in December and January, Mr. Samuels, did he tell you what the price of the acquisition was, what the cost of the Babo acquisition was?

A Yes, sir.

Q What did he tell you Armstrong had paid?

A $300,000.

Q Did there come a time when you learned or heard that Armstrong had paid more than $300,000?

A Yes, sir. I did.

Q Directing your attention to Defendant's Exhibit C, was it before or after December 12, 1967?

A It was after December 12.

Q Approximately how long after December 12, 1967?

A Oh, about four or five months.

Q What did you hear with respect to the acquisition?

A I heard they made a number of deals. One deal--

MR. PENNOYER: Objection as to what he heard, your Honor.

THE COURT: Move to strike it, counsellor.

MR. PENNOYER: Move to strike the answer, your Honor.

gawe Samuels - cross [16]

THE COURT: Yes, granted.

MR. LESCH: I have no further questions.

THE COURT: I want to ask a question.

What, if anything, did you do after the receipt of this letter, Exhibit C of the defendant, which is dated December 12, 1967 and signed apparently by F. S. Donnelly, Jr.?

THE WITNESS: At that time, Judge, my relationship with Mr. Donnelly--

THE COURT: I said what did you do?

THE WITNESS: NOthing, Judge. Sorry.

THE COURT: When was this action started?

Will counsel stipulate?

MR. LESCH: Yes.

THE COURT: The date of the summons filing.

MR. LESCH: Started in the State Court by service of summons and complaint on July 2, 1969, your Honor.

MR. PENNOYER: So stipulated, your Honor.

THE COURT: Between December 12, 1967 and July 2nd, 1969, did you communicate at all with the defendant?

THE WITNESS: I think I had one conversation with them, Judge.

THE COURT: With whom?

THE WITNESS: Mr. Donnelly.

gawe Samuels - cross [17]

THE COURT: Where was that and when?

THE WITNESS: It was in his office.

THE COURT: When?

THE WITNESS: The early part of '68.

THE COURT: Who was there?

THE WITNESS: Mr. Donnelly.

THE COURT: What was the exact date, do you know?

THE WITNESS: It was the early part of January. I think I might have made the call from Chicago.

THE COURT: It was by telephone?

THE WITNESS: By telephone.

THE COURT: I thought you said it was at his office.

THE WITNESS: No.

THE COURT: What was that conversation--

THE WITNESS: It was--

THE COURT: With Donnelly?

THE WITNESS: I said, "I received the chec. Is $300,000 the total amount that you"--

THE COURT: You said what again?

THE WITNESS: "Is $300,000 the total amount that you paid," or words to that effect, "for this deal?"

He said, "Yes, $300,000."

I said, "Wasn't there leases, wasn't there royalties,

gawe Samuels - cross 18

wasn't there patent rights?"

He said, "No, that didn't amount to anything."

THE COURT: Mr. Pennoyer, what is this Exhibit A? What does it say about the fee? What paragraph is it? Is it paragraph 6?

MR. PENNOYER: Relating to this fee?

THE COURT: Yes.

MR. PENNOYER: I simply put that in--

THE COURT: Answer my question.

MR. PENNOYER: All right, your Honor.

THE COURT: Doesn't it say 3 per cent? Can't you read it?

MR. PENNOYER: I'm trying to find the one that would apply.

THE COURT: I thought it was six.

MR. PENNOYER: That is not the one.

THE COURT: Which one does apply? You say there was a written contract, I believe. Which one is it? Which paragraph is it?

MR. PENNOYER: May I just look at it a minute, Judge?

THE COURT: Yes.

(Pause.)

THE COURT: What is meant by Babo in this letter

gawe Samuels - cross [19]

of December 12, Mr. Samuels? Do you know?

THE WITNESS: There was a company by the name of E. T. Babbitt. It was listed at one time with the New York Stock Exchange.

THE COURT: This letter of December 12, 1967, has no relationship then to Thomasville?

THE WITNESS: No, sir. That was only with respect to Babo.

THE COURT: Where is the check? Is that in evidence? Nobody submitted a check yet.

MR. PENNOYER: Your Honor, we didn't submit the check. The witness said he cashed the check. So we didn't submit the check, your Honor. That's in the record now, your Honor.

THE COURT: Mr. Lesch, will you stipulate that a check of $9,000 was paid to Samuels by the defendant?

MR. LESCH: Mr. Samuels, you received that check of $9,000?

THE WITNESS: I did.

THE COURT: You deposited it?

THE WITNESS: I noted there were no inscriptions on it at all. I deposited it.

MR. LESCH: I will stipulate.

THE COURT: That check was forhow much money?

gawe Samuels - cross 20

THE WITNESS: $9,000, sir.

THE COURT: All right.

How much is the claim on the Babbitt affair, Mr. Lesch?

MR. LESCH: Your Honor, we have evidence--

THE COURT: Answer my question.

MR. LESCH: Approximately $3,000, your Honor.

THE COURT: I haven't yet learned what the rate was. Is it 3?

MR. LESCH: 3 per cent, yes.

THE COURT: 3 per cent is what?

MR. LESCH: 3 per cent of $300,000 is 9,000. We have evidence that additional inventory was sold in excess of $100,000.

THE COURT: Is that the claim of the Babbitt?"

MR. LESCH: Yes, your Honor.

THE COURT: Decision reserved on this defense of accord and satisfaction.

All right, go ahead with your plaintiff's claim on the first cause of action relative to Thomasville.

MR. LESCH: All right, your Honor. May we have this marked as Plaintiff's Exhibit 1.

(Plaintiff's Exhibit 1 marked D for identification.)

MR. LESCH: May we have this marked as Plaintiff's

gawe Samuels - cross [21]

Exhibit 2.

(Plaintiff's Exhibit 2 marked for identification.)

(Plaintiff's Exhibit 3 marked for identification.)

MR. LESCH: Will you mark this for identification.

(Plaintiff's Exhibit 4 marked for identification.)

MR. LESCH: Wouldyou mark this 4A, please.

(Plaintiff's Exhibit 4A marked for identification.)

MR. LESCH: Would you mark this for identification.

(Plaintiff's Exhibit 5 marked for identification.)

MR. LESCH: Mark this as Plaintiff's Exhibit 6 for identification.

(Plaintiff's Exhibit 6 marked for identification.)

MR. LESCH: These are 7, 8 and 9.

(Plaintiff's Exhibits 7, 8 and 9 marked for identification.)

MR. LESCH: I offer in evidence Exhibits 1 through 4, 4A and 5 through 9 for identification.

MR. PENNOYER: Defendant has no objection to 1, 2 and 3. As to 4, 4A, 5 and 6, Defendant has no objection except that it would like to reserve the opportunity to supplement these papers if there are any others of similar import.

THE COURT: You have that anyway.

MR. PENNOYER: Secondly, they are fairly extensive. I would like to check to make sure that they are correct copies.

THE COURT: What are they? What kind of papers are they?

MR. PENNOYER: They are documents relating to a distributorship agreement with the Babbitt Company and some other Babbitt papers.

THE COURT: You will have to fish or cut bait now on this.

MR. PENNOYER: Then we will object to those. I want to say to the Court, I think after the lunch hour we can probably--

THE COURT: All right, I will reserve then at this time.

MR. LESCH: What about 7, 8 and 9?

MR. PENNOYER: As to 7, 8 and 9, we take the same position. We object, but we think we can clear the matter up after lunch.

MR. LESCH: On the representation of counsel, I am not going to subpoena anyone from Armstrong at this time or ask the Court to direct someone to come in to identify these documents.

gawe Samuels -cross [23]

THE COURT: May I see the exhibits that were admitted?

(Plaintiff's Exhibits 1, 2 and 3 for identification received in evidence.)

THE COURT: What's the gist of number 1?

MR. LESCH: Your Honor, number 1 is a proxy statement that was sent to the shareholders of Armstrong in or about 1968. The date appears thereon.

THE COURT: What does it show?

MR. LESCH: It shows there was a merger proposed between Armstrong and Thomasville--

THE COURT: What does it show the plaintiff did anything with respect to this?

MR. LESCH: I will put in the plaintiff's testimony in a moment. This and the following exhibit shows that the merger occurred and the terms of the merger that did occur.

THE COURT: That alone, of course, is insufficient, but go ahead.

MR. LESCH: Exhibit 3 is just designed to show the closing price of Armstrong on the effective date of the merger.

THE COURT: All right. That has something to do with the valuation?

MR. LESCH: Yes, your Honor.

gawe Samuels - cross Direct [24]

THE COURT: All right.

This will be the plaintiff's case.

DIRECT EXAMINATION

BY MR. LESCH:

Q Mr. Samuels, what is your profession, sir?

A I am an attorney at law by profession.

Q Are you admitted to the bar of New York State?

A Yes, sir.

Q How long have you been admitted, sir?

A Since Around March or May 1930.

Q Are you admitted to the bars of any other states or courts?

A Admitted to the Eastern District, Federal Court.

Q What business have you been engaged in?

THE COURT: Outside of practing law?

Q Have you ever actually practiced law?

A Yes, I practiced law between the year 1930 and the year 1941 when I was drafted into the army.

Q What business were you engaged in after you left the armed services?

A I have been in the brokerage business acting as a finder or broker in mergers, acquisitions and divestments.

THE COURT: I have a stipulation for settlement of an action, gentlemen. You may stay where you are.

(Recess.)

DIRECT EXAMINATION (CONTINUED)

BY MR. LESCH:

Q Mr. Samuels, what do you do as a broker-finder?

A I find companies in the marketplace through knowledge of companies in the street which I have acquired over the many years I have been in the business, through following the Wall Street Journal and the ads that appear therein to buy, sell or merge businesses and otherwise use my ingenuity in talking to the presidents or chairmen of the boards or other executives of various corporations to find out if there is anything they want to buy or sell or merge.

Q How long have you been engaged in this business, sir?

A Approximately 34 years at this time.

Q Is it presently your exclusive source of livelihood?

A Yes.

Q How long has it been your exclusive source of livelihood?

A Approximately 30 years, I would say.

Q Have you acted as a finder or broker for acquisitions that have actually been consummated?

A Yes.

Q How many of those have you assisted as a finder

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or broker?

MR. PENNOYER: Your Honor, I don't know what this has to do with this case.

THE COURT: What is that?

MR. PENNOYER: I object. It's irrelevant to this case.

THE COURT: I will take it just generally. It simply shows his experience, that is all.

Approximately.

THE WITNESS: The average is about two deals a year and since I have been in the business for 34 years, I would say somewhere between 65 and 70 deals, maybe a few more or a few less.

Q Have you acted as a broker or finder in the furniture field?

A Yes, I have.

Q In connection with which acquisitions, sir?

A I was the finder or broker in the acquisition of the International Furniture Company in the year 1950 or '51 and I acted as a broker in the merger between the Mohasco Corporation and Futurian Furniture Company in the year 1963.

THE COURT: All this does is possibly lay the foundation -- I don't say it does -- for any expertise that

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may be offered. That is all. It has nothing to do with the factual contents of the particular case involved here. All right.

Q In connection with those acquisitions, did you become familiar with the various companies in the furniture field?

A Yes, I have. Most all companies that have an availability in the marketplace I became acquainted with and at one time or another, contacted them.

Q How many companies were those, sir?

A Quite a number. Anywhere between 50 and 100 or more than that even.

Q Did there come a time when you met the president of Thomasville Furniture, Inc.?

A Yes.

Q Furniture Industries, Inc.

When was that, sir?

A The early part of 1965, I believe.

Q Where was it?

A It was at a dinner given in his honor by the Brandise University attended by the furniture industry.

It was either in the furniture mart in Chicago or one of the hotels. I don't remember exactly which.

Q What did you say to him and what did he say to you

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at that time?

A During the dinner I made --

MR. PENNOYER: Can we have the name of the gentleman first, your Honor.

Q What was his name, Mr. Samuels?

A Who?

Q The president.

A Tom Finch. He is known in the trade by. I don't know his full name.

Q Was anyone else present at this first meeting?

A I was sitting at a table --

THE COURT: Answer his question. Don't tell us where you were sitting.

THE WITNESS: There were hundreds of people there.

THE COURT: In the conversation they weren't all within earshot, were they?

Was anybody nearby or heard any of the conversation as far as you can tell?

THE WITNESS: I think Mr. Futurian heard the conversation.

THE COURT: Who was he?

THE WITNESS: He was the principal in the merger that I made with the Mohasco Carpet Company.

THE COURT: Some other deal?

THE WITNESS: Yes. It had taken place a few days before.

THE COURT: Get into the conversation.

Q Tell us what was said.

THE COURT: By Finch or by you.

THE WITNESS: Finch said something like "Thank you for your contribution."

THE COURT: What was that?

THE WITNESS: I gave $500.

Q Was anything else said at that time?

A Futurian said to him "Tom", or Mr. Finch, I don't remember how he addressed him, he said "Harry is the one who did the merger for me with Mohasco" and he said "That is very interesting, very nice".

Q Was anything else said at that time?

A There were a lot of people waiting around to talk to him.

THE COURT: What difference does that make, Mr. Samuels? Get down to the conversation, if any further, by you and Mr. Finch.

THE WITNESS: "I will see you again sometime".

THE COURT: Who said that?

THE WITNESS: Mr. Finch to me.

THE COURT: It's interesting, but not

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productive.

MR. LESCH: May we have this marked as a plaintiff's exhibit.

(Plaintiff's Exhibit 10 marked for identification.)

THE COURT: You had known Finch for quite a while?

THE WITNESS: I knew of him, yes.

THE COURT: You never met him before?

THE WITNESS: Not person to person.

THE COURT: All right.

I don't know whether this is before or after I heard some agreement. I heard nothing of that.

Q What is the date of your meeting with Finch that you have just described, Mr. Samuels?

A The furniture market in Chicago in the early part of '65 which usually takes place sometime in the early part of January.

THE COURT: Was it in January?

THE WITNESS: Yes.

Q I show you Exhibit 10 for identification and ask you whether you sent this letter to Mr. Smith on or about July 18, 1966?

A Yes, I did.

MR. LESCH: I offer it in evidence.

MR. PENNOYER: Objection on the grounds of relevance, your Honor.

THE COURT: Let me see it.

Who is Mr. Smith -- vice president of First National City Bank?

THE WITNESS: Yes, sir.

THE COURT: Sustained.

Q Did there come a time when you first met an officer of Armstrong Cork Company?

A Yes, sir.

Q When was that?

A On or about August 10, 1966.

THE COURT: Who was it?

THE WITNESS: Banzhaf, who was a vice president, I believe, of the company at the time.

Q How was that meeting arranged?

A Mr. Eric Smith, a vice president of the First National City Bank of New York telephoned me and said that one of our clients, a very prominent company, is interested --

MR. PENNOYER: Objection. It's hearsay, your Honor.

THE COURT: Sustained.

You came somewhere and met Donnelly, treasurer

of Armstrong Cork Company?

THE WITNESS: Yes.

THE COURT: And you met Banzhaf, the vice president. Where was that?

THE WITNESS: They picked me up at the railroad station in Lancaster, Pennsylvania.

THE COURT: You went to Lancaster.

THE WITNESS: They asked me to come down, yes.

THE COURT: At the railroad station you met them?

THE WITNESS: Right.

Q Was anyone else present at your conversations with people from Armstrong other than Mr. Banzhaf and Mr. Donnelly?

A Yes, sir.

Q Who else was present?

A They took me to --

Q Just tell us who else was present during these conversations?

A When?

Q August 10, all your conversations on August 10.

A All of them?

Q Yes.

A Firstly, we met in a living room in their main office and Mr. Donnelly brought in the then president, a

Mr. Warnock, the present president, Mr. Binns, and I also met at lunch a Mr. Painter who I believe was the vice president. I met Mr. Harry Jenson who is in charge of their floor covering business. I met a Mr. Ellis who was their accountant or controller or something, and several other people whose names don't occur to me now.

Q Will you start with your conversations with Mr. Donnelly and Mr. Banzhaf. Will you tell us those conversations.

THE COURT: Where was this, at the station?

THE WITNESS: We discussed nothing at the station.

THE COURT: Tell us where it was.

THE WITNESS: In the main office of the Armstrong Cork Company in Lancaster, Pennsylvania.

THE COURT: Please try to answer the questions and don't volunteer.

Q Will you tell us, Mr. Samuels, what you said to Mr. Banzhaf and Mr. Donnelly and what they said to you?

A I said --

THE COURT: You will have to tell which one said it.

THE WITNESS: Mr. Donnelly said "Mr. Samuels, we are acquainted with your expertise, with your experience in the furniture field and the carpet field and, as you know,

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the reason you came down here is because we are interested in acquiring companies either in the furniture field or in the carpet field or in any other line that may be kindred to what we are doing." I said "Fine". He said "Mr. Smith told us all about you and of the deal you made with Mohasco and Futurian and other deals that you made in the industry." I believe he told me he knows about the Fedders, the air-conditioning deal that I was instrumental in putting together and whether he mentioned International Furniture or not, I don't remember at this time.

I said "Well, now that you mentioned Mohasco, you are a very large company, you know that is the premier corporation on the New York Stock Exchange in the carpet business and I believe it's the largest carpet company in the world. I believe I may be able to make that available to you."

THE COURT: That is not involved in this case.

MR. LESCH: No, it isn't, your Honor.

THE WITNESS: Then I said "There is a Thomasville Furniture Company."

As soon as I mentioned Thomasville their ears perked up and Banzhaf got up and ran out of the room and came right back with three pieces of paper, all coming out

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jqsg 11 Samuels-direct

of either Moody's or Standard and Poors, the financial manuals.

THE COURT: What did he say when he came back?

THE WITNESS: He said "I have the information righ here."

Q What were those three sheets of papers?

A One was Mohasco, the other Thomasville and the other one was Kroehler, also another large and prestigeous company.

Q Were those the sheets from these manuals which contained the financial information relating to those companies?

A Right.

Q What else was said, Mr. Samuels, at that time?

A I said "That is very interesting, let's look at them."

THE COURT: Who is this?

THE WITNESS: Mr. Donnelly did most of the talking. Mr. Danzhaf said "I have these right here and we can go over them." I told him that I know Mr. Shuttleworth who is the president of Mohasco and he is a very good friend of mine and, I believe, that if you are really interested in a large company such as Mohasco I can make it available to you. I said also --

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THE COURT: What if anything did you say about Thomasville?

THE WITNESS: I am coming to it.

THE COURT: I know you are coming to it but I don't think it's necessary to go into these side alleys.

THE WITNESS: I said that I also know the president and controlling stockholder of Thomasville and I believe he is available, the company is available, and you may be able to acquire them. I also have an inkling, and I did, that Kroehler might be available.

THE COURT: Which one?

THE WITNESS: Kroehler, the third largest furniture company listed on the New York Stock Exchange.

THE COURT: All right.

Q Was anything said about your fee arrangement at that time?

THE COURT: Was there any proof of engagement, let alone fee.

MR. LESCH: Your Honor has that before him on that August 25 contract.

THE COURT: All right.

THE WITNESS: Nothing at that time. This was in the living room of the Armstrong Furniture Company.

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THE COURT: You weren't engaged then at that time to find this other company, Thomasville?

THE WITNESS: Not at that time.

THE COURT: All right. THat just about ends this unless there is something else that is pertinent.

Q Did they suggest a per diem arrangement with you at that time?

A Not at that time, no.

Q What else did you do on August 10?

A Then we went to have lunch at the country club which Mr. Banzhaf told me --

THE COURT: That is not too important.

Q Did you see the facilities of Armstrong at that time?

A No.

Q Was anything else said about Thomasville on that day?

A Yes, we said something about Thomasville during lunchtime --

THE COURT: This wasn't a duet. Who was we?

THE WITNESS: Mr. Donnelly told Mr. Warnock and Mr. Binns who was sitting with us at the table and, I believe, Mr. Painter was there at the time, we were discussing the possibilities of acquiring Mohasco,

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Kroehler and/or Thomasville. Then in the afternoon they started talking to me about retainer.

THE COURT: You will have to tell who did it.

THE WITNESS: Mr. Donnelly.

THE COURT: Where was this?

THE WITNESS: Mr. Donnelly took me on an automobile trip through the research and development division of Armstrong and we talked in the automobile on the way to the research and development and on the way back from research and development.

THE COURT: What was said?

THE WITNESS: Mr. Donnelly said that we would like to retain you. We could put you in charge of acquisitions.

THE COURT: Of what?

THE WITNESS: Our furniture companies, carpet companies and/or any other companies that would fit in the Armstrong complex. He said "Will you work on a per diem basis" and I said "No". I explained to him how I worked.

THE COURT: What did you say?

THE WITNESS: I told him I worked only on contingent retainers. I did that when I practiced law and I am doing it now in my business as a broker. I work on a

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contractual arrangement, either oral or written and have a fixed fee. He said "What would your fee be if we gave you a contract here" and I said "Three per cent of any deal that you may consummate." He said "If you will send me a draft of an agreement I will discuss it with my associates and we probably would retain you because we have the need of a man of your experience."

He said "You notice how friendly the whole management you met today was to you" -- and that was practically the whole management -- "and I believe you can do a lot of good for us and you can make a lot of money."

I said "I am highly flattered concerning your comments and I will do everything I can, everything in my power and use all my connections to get you exactly what you want."

MR. LESCH: May we have this marked.

(Plaintiff's Exhibit 11 marked for identification.)

(Plaintiff's Exhibit 11A marked for identification.)

Q Mr. Samuels, what is Exhibit 11 for identification?

A Yes, I wrote this.

Q Is that a letter that you wrote to Messrs. Warnock, Binns and Donnelly on or about August 12, 1966?

A Yes, sir.

Q Did you send it to them on or about that date?

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A Yes, sir.

Q What is Exhibit 11A for identification?

A This was a draft --

THE COURT: This is what?

THE WITNESS: A draft of theproposed agreement.

THE COURT: Did you send it to anybody?

THE WITNESS: I sent it to Mr. Warnock, Binns and Fred Donnelly, Warnock president, Binns vice president and Donnelly treasurer of the Armstrong Cork Company addressed to them at Lancaster Pennsylvania.

Q Did you send Exhibit 11A together with 11?

A Yes.

Q At the time you sent it did it have the handwritten notations in the margin on pages 1 and 2 and 3?

A No.

MR. LESCH: I offer Exhibit 11 and Exhibit 11A without the handwriting.

MR. PENNOYER: No objection.

(Plaintiff's Exhibits 11 and 11A received in evidence.)

Q Mr. Samuels, after you sent Exhibits 11 and 11A for identification, did you have another meeting with Armstrong?

A Yes, sir.

Q Where did that meeting take place?

A Lancaster, Pennsylvania.

THE COURT: When?

THE WITNESS: On or about the 25th of August, about two weeks later, two weeks and one day later.

Q Who was present at those conversations?

A Mostly Mr. Donnelly and Mr. Banzhaf came in and out and we had lunch again at the club at which a few people attended.

THE COURT: Which what?

THE WITNESS: A few officers from the company attended.

THE COURT: That doesn't mean a thing.

THE WITNESS: I spent the afternoon talking to Mr. Donnelly alone.

Q Now, sir, I show you Defendant's Exhibit A in evidence which is the finder's fee agreement which is dated August 25, 1966 and I ask you whether you signed that agreement in Lancaster, Pennsylvania on that date, August 25?

A Yes, I must have signed it.

THE COURT: Is there any doubt about it?

Is that your signature on it?

THE WITNESS: It's my signature and my numerals are on there, 825.

THE COURT: Is your signature on there?

THE WITNESS: Yes.

THE COURT: Did anybody else sign it?

THE WITNESS: Yes.

THE COURT: Who?

THE WITNESS: Mr. F. S. Donnelly, Jr., treasurer.

THE COURT: Armstrong Cork Company, does it say?

MR. LESCH: Yes, Armstrong Cork Company.

THE COURT: All right. That is in evidence, isn't it?

MR. LESCH: Yes.

MR. PENNOYER: It's an exhibit, your Honor.

THE COURT: To orient us, does this cover only the Thomasville case?

MR. LESCH: This covers both of them, your Honor.

THE COURT: All right.

Q Will you tell us what Mr. Donnelly and Banzhaf said to you on the 25th of August and what you said to them?

THE COURT: Before or after this document was signed.

Q Can you remember when in the day you signed that document? That is, Defendant's Exhibit A for identification.

A It must have been as soon as I came in there.

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THE COURT: What time was that?

THE WITNESS: About 10, 11 o'clock in the morning.

Q You say must have been, do you actually have any recollection of signing it?

A Yes, because we went to lunch --

THE COURT: Never mind the because. You don't have to argue the case. Just answer the questions.

Q Tell us what was said prior to your actually signing the agreement.

A Nothing was said prior.

Q What was said after the agreement?

A Fred Donnelly said "Now that you have our agreement and we have your agreement let's start talking and doing".

THE COURT: All right.

Q What else did he say?

A He said "But first and foremost you must do me a favor. We are having some problems with management with respect to Mr. Banzhaf."

Q Was Mr. Banzhaf present when he said that?

A No, sir.

THE COURT: I don't know what this has to do with this case.

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MR. LESCH: May I offer it subject to connection, your Honor?

THE COURT: All right.

A He said that Mr. Banzhaf was put in charge of mergers and acquisitions by the company and as far as the management is concerned he doesn't know anything about mergers or acquisitions, he hasn't done a thing but he is about to close one deal by the name of MArgan Furniture Company. I would like you to look it over. I am handing it to you right now.

THE COURT: What was he handing to you?

THE WITNESS: A write-up on the Morgan Company and he said "I want you to dissuade the company from buying this company without embarrassing Mr. Banzhaf, get up some kind of a letter immediately."

THE COURT: What did that have to do with your retainer?

Off the record.

(Discussion off the record.)

THE COURT: All right. Go ahead.

THE WITNESS: He said "Make your letter as fine as you know how, as you can, according to your experience but don't embarrass Banzhaf because he is a friend of mine and I don't want to hurt him but see to it

that the company does not buy Morgan. It will be a great mistake if they bought it."

THE COURT: You say you were employed both to acquire Thomasville and to dissuade the company from acquiring this other Morgan organization, is that so?

THE WITNESS: One was very small, Judge.

THE COURT: You don't contend that you are suing because of the dissuasion, are you?

THE WITNESS: Not at all, sir. This was just in line with the conversation we spent the whole afternoon on and after he told me what he wanted in the letter --

THE COURT: Who did?

THE WITNESS: Fred Donnelly. Almost everything I say in connection with this, Judge --

THE COURT: I am not going to take an omnibus statement as to what Donnelly said.

THE WITNESS: Donnelly said "Let's talk about Mohasco, Thomasville and Kroehler."

THE COURT: You told us that.

Q What else did Mr. Donnelly say at that time, August 25?

A It would seem that Mohasco, Thomasville and Kroehler are very large companies and it's the political policy of our corporation, our corporate directors

jqsg 22 Samuels-direct [46]

and officers, not to buy anything for stock if it would make the acquiring company a large stockholder and probably dictate the policies of the company.

Q You mean the acquired company?

A Yes, the acquired company. Mr. Donnelly spelled out to me that the Armstrong Cork Company has been, since its inception, a growth Lancaster company. Most of the officers started at the bottom of the ladder and grew up through the ranks to become chairmen for a few years and then the president became chairman and down the line. He said we try to avoid buying anything for stock and it would seem that Mohasco, Thomasville and Kroehler are very large and there are large holdings in each of those companies which would stop us from doing that.

I told them, I said "Fred, that all can be taken care of. Let's go over each one, one by one, and I will explain to you why you can acquire Mohasco, Thomasville or Kroehler with stock without giving the acquired company any control of the company. You will have your pie and you will eat it."

THE COURT: You were going to give them a little legal advise?

THE WITNESS: I don't think this is legal advise,

Judge.

THE COURT: Whatever it was.

THE WITNESS: This is advice in the nature of a broker, Wall Street advice I was giving him. I told him he can issue a preferred common stock, preferred stock, convertible preferred, subordinate debentures or convertible debentures. We went over the Mohasco balance sheet which was briefly set forth in the three sheets that he also had in his pocket at that time that we looked at when I was there on August 10 and he said to me "Let's go over them."

I went over them and told him that as far as Mohasco was concerned, Mr. Shuttleworth, the president had very little stock. He is a very fine gentleman --

THE COURT: To shorten this case up, Mr. Lesch, let me ask a specific question.

Were you ever told to go after any company except Thomasville?

THE WITNESS: Oh, yes.

THE COURT: You don't claim any fee for those?

THE WITNESS: They weren't consummated as far as I know.

THE COURT: I don't know whether he went after these others.

jqsg 24 Samuels-direct [48]

THE WITNESS: None of them as far as I know were consummated.

THE COURT: I am telling your lawyer that I don't think it makes any difference.

Q Was anything more said about Thomasville on August 25?

A Yes. He said that since --

THE COURT: Who said?

THE WITNESS: Donnelly said that since the policy is that we don't acquire a company where there are large blocks of stock issued I don't think that Mohasco or Thomasville or Droehler should be gone into but you can follow them up anyway, follow them up and keep me advised as to what is available and how the deal can be done if it can be done.

THE COURT: Can't we get into Thomasville, what if anything he did about that, counsellor?

MR. LESCH: Very well.

THE COURT: Leave the others by the way.

(Plaintiff's Exhibit 12marked for identification.)

gawe 1 Samuels - direct [49]

Q What is Exhibit 12 for identification? Just give the date and the person to whom it is addressed.

A Yes. I wrote it to Mr. Donnelly, Mr. Banzhaf and Mr. Ellis.

Q This is a letter you wrote on August 26, 1966?

A Yes.

Q Did you send it to the addressees on or about that date?

A Yes.

MR. LESCH: I Offer Exhibit 12.

MR. PENNOYER: No objection.

MR. LESCH: I offer it in evidence.

(Plaintiff's Exhibit 12 marked for identification received in evidence.)

Q What is the company that is referred to in Exhibit 12, Mr. Samuels?

A The Morgan Company.

Q Did there come a time when you had further conversation--

THE COURT: There's nothing in this letter, Exhibit 12 then, about Thomasville, is there?

THE WITNESS: No, sir.

THE COURT: I don't know why it is offered.

MR. LESCH: The only reason it is offered, your

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Honor, is with respect to the credibility of Mr. Samuels--

THE COURT: Does Morgan have anything to do with his action about Thomasville, Mr. Lesch?

MR. LESCH: The defendant contends that Mr. Banzhaf was the one that brought about the Thomasville merger. Plaintiff contends that Armstrong had no faith at all in Mr. Banzhaf.

THE COURT: I don't know how this shows it. It is in evidence.

Q After you sent this letter, Exhibit 12, did you have any further conversation with people from Armstrong about Thomasville?

A Yes. Mr. Donnelly then called me. He said, "Thank you very much for the letter. It is perfect. It is fine. It served its purpose. You come down to Lancaster again."

I said, "Can't you fellows come up to New York, see me in New York?"

He says, "You better come down here. We may want you to see some of the other officers of the company."

I went down there sometime in the early part of September.

Q Who did you meet at that time when you went to Lancaster?

A Mr. Donnelly and Mr. Banzhaf.

gawe 3 Samuels - direct 51

Q Was anything said about Thomasville at that time?

A Yes. After Banzhaf left the room Donnelly said to me, "We have looked over these various situations we discussed", which included Thomasville. He says, "I think you want to make sure that Thomasville is available."

I said, "I'm sure its available."

He says, "I'll tell you why I say that. Banzhaf told me that some of our people were in touch with Thomasville, not in connection with any merger or acquisition or a buy out, but in connection with having us move some dimension stock out of plastics so that Thomasville can use it in their work of putting together furniture.

I have made inquiries and so has Banzhaf since we last talked to you, the last few times."

Q Who is saying this?

A Donnelly.

"We find that there is not any likelihood that Thomasville is available."

I told him it was. I said, "I circulate through the furniture market all the time and in Wall Street and I heard it from many places that they would not do a deal with anybody, but with a firm of your statute they would."

I particularly told Mr. Donnelly that through the Mohasco Company on a confidential basis I found out that

Thomasville had been offered to Mohasco. There were discussions between Tom Finch and Mohasco about the sale of the Thomasville Company. He says, "If you are sure about that, you go right ahead and get it for us."

Q Is that the substance of your conversation about Thomasville in that early September meeting?

A Right.

Q Did you have any further discussions about Thomasville with anyone from Armstrong after that?

A Yes, on the telephone many, many times.

He said, "Have you talked to Tom Finch yet?"

I said, "I have been trying to get ahold of him."

THE COURT: Who is this?

THE WITNESS: He's the president. Donnelly, I spoke with Mr. Donnelly.

THE COURT: With whom were you talking on the telephone?

THE WITNESS: Mr. Donnelly.

THE COURT: All right.

A He said, "Did you talk to Thomasville"--

MR. PENNOYER: May we have a date on this, your Honor?

THE COURT: Fix the time.

Q When was that?

gawe 5 Samuels - direct (53)

A I spoke to him almost every day because we were in the midst of looking at--the Armstrong people went to look at several companies that I indicated to them might be available.

THE COURT: Never mind the because part. You say it was almost every day.

During what period?

THE WITNESS: Between the early--between the last visit I made to Lancaster--

THE COURT: When?

THE WITNESS: September 1966.

THE COURT: And?

THE WITNESS: To the end of the year.

THE COURT: The end of 1966?

THE WITNESS: Of '66, yes, sir.

I told him I had called Mr. Finch on several occasions and he never returned my call. So the best thing to do I said, Fred, is to wait until he gets to the furniture show, which takes place the early part of January.

Since we were then close to the end of the year, I said, "Let me nam him in Chicago, at the furniture show, and I will see if I can spur negotiations on.

MR. LESCH: Will you excuse me one moment, your Honor.

gawe 6 Samuels - direct [54]

(Pause.)

MR. LESCH: May we have this marked as a plaintiff's exhibit for identification.

(Plaintiff's Exhibit 13marked for identification.)

Q What is Exhibit 13 for identification? Just to short cut this, is this a letter which you sent to Mr. Banzhaf on October 10, 1966?

A Yes.

Q At the time that you sent the letter, did you also write what appears in handwriting at the bottom of the letter?

A Yes, that is my handwriting.

Q Did you also write what appears on the other side of the page?

A That's my handwriting and my signature, the first part of it.

THE COURT: You offer this with the handwriting?

MR. LESCH: I offer this with the handwriting.

MR. PENNOYER: May I ask a preliminary question, your Honor.

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. PENNOYER:

Q This letter, Plaintiff's Exhibit 13 for identifi-

gawe Samuels - direct [55]

cation, is addressed to Mr. Banzhaf, is that correct?

A That's right. A copy was sent to Mr. Donnelly.

Q Right, sir. The paper you had before you is the copy sent to Mr. Donnelly, isn't that correct?

A It might be.

Q Did you put that--

A This is a photostat.

Q Did you put that handwritten note on the original you sent to Mr. Banzhaf?

A Yes--no, I didn't, only put on the copy that went to Mr. Donnelly.

Q Thank you.

A You are welcome.

MR. PENNOYER: No objection.

(Plaintiff's Exhibit 13 for identification received in evidence.)

THE COURT: This hasn't anything to do with the acquisition of Thomasville, does it?

MR. LESCH: Yes, it does, your Honor.

THE WITNESS: Yes.

THE COURT: Is it in the notes?

MR. LESCH: Yes, your Honor.

BY MR. LESCH:

Q Mr. Samuels, in the note at the bottom the first

gawe Samuels - direct [56]

line is, "You might want to give some thought to the premise that Tom Finch may not want any of the executives to know what he may have in mind."

What were you referring to there, sir?

A It's been my experience--I said further there--

Q What were you referring to, "What he may have in mind"?

A What he may have in mind with respect to the sale or merger of Thomasville Furniture Company.

Q And then the note goes on, "It has been my experience that executives of his type don't tell their fathers, wives, or sons of their plans, and since it is the least likely of the deals, you might aborn , think about it, Harry."

What do you mean when you said "It is the least likely of the deals."

A He kept on telling me, Donnelly, that he doesn't think that the management might want to go along to give Mr. Finch a large block of stock in the corporation. He asked me to try to get Finch to come to this meeting that I referred to in October the 10th. I tried to get Finch on the telephone. I couldn't get him.

Before that he kept on telling me--Donnelly kept on telling me--if he said it once, he said it 20 times during that year and before I wrote this note, "Don't mention

gawe Samuels - direct [57]

Finch in any correspondence to me. Politics, you know, company politics."

So I didn't do it. Then I got suspicious that he had some reason--

THE COURT: Never mind what you thought about it.

Q Did he also tell you not to mention Thomasville in writing?

A Right. Thomasville and Finch, the same thing, synonymous.

Q Did Mr. Donnelly ever tell you in1966 that Armstrong and Finch were meeting together?

A Yes, he said that they wanted to have thig meeting in October. He wanted me to arrange it. Since I couldn't reach him on the telephone, I may have left a message with his secretary that Armstrong wants to meet him. I don't have any record of that at all.

THE COURT: We will have a recess at this time for five minutes.

(Recess.)

BY MR. LESCH:

Q What did you say to Mr. Donnelly when he asked you to arrange this meeting with Mr. Finch?

A I told him that I tried him on the telephone a number of times, couldn't get him, and left messages with

his secretary why I wanted this call to go through to him. He never called back. I told him it was with respect to Armstrong. He never called back.

THE COURT: You never had a call back?

THE WITNESS: No, sir, not at that time.

THE COURT: Where did you call?

THE WITNESS: At his factory.

THE COURT: Thomasville?

THE WITNESS: Yes, North Carolina somewhere.

THE COURT: Thomasville, did it have a factory in North Carolina?

THE WITNESS: I believe it was in North Carolina.

THE COURT: I thought it was a Connecticut corporation?

THE WITNESS: No, there's a town by the name of Thomasville in Connecticut.

THE COURT: I thought so.

Q Mr. Samuels, during 1966 did Mr. Donnelly or anyone else from Armstrong inform you that they had actually met with Mr. Finch in October 1966?

A No.

Q Did there come a time when you did meet Mr. Finch?

A Yes.

Q When was that?

gawe Samuels - direct [59]

A It was, I believe, on the 10th of January 1967.

THE COURT: Where?

THE WITNESS: In Chicago, at the--I think it was at the Kennedy Merchandise Market.

THE COURT: Is that some annual affair?

THE WITNESS: Yes, sir, one of two annual affairs.

Q Was anyone else present when you met Mr. Finch?

A I met him talking to a Mr. Simmons, I think his name was, in front of the American Martins Industrial Showroom.

There was a fellow whom I knew for a number of years by the name of Collier Black from Atlanta, Georgia.

He was standing there. I said to thim--

Q Who was present now? Was Mr. Simmons present?

A Yes.

Q Was Mr. Black present?

A Yes, Mr. Black was there.

Q And Mr. Finch and yourself?

A Yes.

Q Anybody else?

A That's all.

Q Tell us--

THE COURT: Just answer his questions.

A I asked Collier Black, "Is Mr. Finch around?"

gawe Samuels - direct [60]

He said, "There he is," pointing to his boss. "There he is standing with his boss."

I went over and said, "How are you, Mr. Finch."

He said, "Hello, how are you?"

I'said, "I'm Harry Samuels. I hope you remember me."

He says, "Yes, I do. Yes, I do. Could we talk for a few minutes?"

THE COURT: What did he say, if anything?

THE WITNESS: Yes. I asked him, "How are we getting on with the Armstrong deal?"

He said, "Armstrong deal? I don't think I'm interested in going through with that, but I am interested in buying some companies, and since you are a specialist in that field, bring me some companies."

I said, "You know, Mr. Finch, I can't do that. I'm committed to Armstrong. I have talked to Armstrong about you and the fine company you have. If there's any deal going to be done with you, it's going to be done by Armstrong. Unless and until Armstrong releases me from this obligation. I can't talk to you."

He says, "Well, that's it."

Q Was anything else said by you or Mr. Finch at that conversation?

gawe Samuels - direct [61]

A That's all.

Q Did you thereafter have aconversation with Mr. Donnelly?

A Yes, I called Donnelly that same evening, I think it was, that same afternoon.

I told him about my conversation with Finch.

Q What did Donnelly say?

A He said, "Well, if that's it, that's it.

Q Did he say anything else?

A That's all.

Q Did he tell you that you should stay away from Mr. Finch?

A No. As a matter of fact, he said, "Keep after him"

THE COURT: He didn't release you from your arrangement?

THE WITNESS: I told him exactly--

THE COURT: I just asked you--

THE WITNESS: No, sir.

THE COURT: Please don't volunteer so much.

xx (Plaintiff's Exhibit 14 marked for identification.

Q I show you Plaintiff's Exhibit 41, Mr. Samuels, dor identification, and I ask you whether you received that

gawe Samuels - direct [62]

shortly after January 11, 1967?

A Yes.

MR. LESCH: I offer Plaintiff's Exhibit 14.

MR. PENNOYER: No objection.

(Plaintiff's Exhibit 14 for identification received in evidence.)

THE COURT: What do you say is the effect of this letter, Mr. Pennoyer?

MR. PENNOYER: Your Honor, as to the Thomasville, we say that Thomasville was never part of the contract, and it was made very clear in the very beginning to Mr. Samuels that it wasn't part of the contract. So that this terminates the finder's fee agreement and there were some 50 companies submitted under it, which I will go into.

THE COURT: I would like to see paragraph 10. I suppose it is August 23.

MR. PENNOYER: HEre is Exhibit A.

(Pause.)

THE COURT: What do you say the effect of this is, Mr. Lesch, Exhibit 14?

MR. LESCH: The effect of this was an attempt to terminate their obligation with respect to Thomasville.

Mr. Samuels having done a certain amount of work with respect to Thomasville was now nearing the point where

gawe Samuels - direct [63]

he was going to be able to actually arrange a merger, and seeing this the Armstrong people in bad faith terminated the agreement in order to cut off his fee.

THE COURT: Any further questions now?

MR. LESCH: Yes.

BY MR. LESCH:

Q Mr. Samuels, the August 25 agreement says "In the event you submit a possible acquisition which has theretofore been considered by us even though no negotiations with respect thereto had taken place and irrespective of the source thereof, suppliers, customers, bankers, employees, outside directors, other brokers or any other source, we will advise you promptly of that fact and thereafter you will refrane from working on our behalf on that deal."

Did Armstrong ever advise you that they were considering Thomasville as an acquisition prior to January 11, 1967?

A No, sir.

Q Did they advise you, Mr. Samuels, that certain other deals that you were working on were being considered by them, and, therefore, that you should not work on these deals?

A Yes, one other deal that I remember.

THE COURT: I don't understand that. Read those last two or three questions and answers.

gawe Samuels - direct [64]

(Record read.)

xx (Plaintiff's Exhibit 15 marked for identification.)

THE COURT: Prior to the date of this letter, which is Exhibit 14, the date being January 11, 1967, had you developed any concent of Thomasville to go into any relationship with Armstrong?

THE WITNESS: Would you repeat that question?

THE COURT: Read it. It is clear.

(The question read.)

THE COURT: Yes or no.

You hesitate.

THE WITNESS: Well, I don't know what terms you mean that, Judge.

THE COURT: It is clear.

Had Thomasville agreed to any merger up or down with Armstrong before January 11? You just hesitate.

THE WITNESS: Well, Judge, this is a long time ago.

THE COURT: Yes, it is a long time ago, but you are suing on something that you did a long time ago. You say you did. Don't you know what you did?

Did you have any consent of Thomasville to enter into any relationship with Armstrong before January 11?

gawe Samuels - direct [65]

THE WITNESS: With respect to this meeting--

THE COURT: No, answer my question yes or no or you don't recall. Which is it?

THE WITNESS: I think yes, Judge.

THE COURT: What was it?

What had Thomasville done which indicated to you that it was interested in any merger with Armstrong?

THE WITNESS: I would say they were interested in meeting.

THE COURT: I say "say". What did they say to you?

THE WITNESS: I have no present recollection of that, Judge.

THE COURT: All right. Off the record.

(Discussion off the record.)

BY MR. LESCH:

Q Mr. Samuels, what is Exhibit 15 for identification? Just give me the date of the letter?

A The date of the letter is January 4, 1967?

Q It is a letter to you from Mr. Donnelly?

A Right.

Q Did you receive it shortly after January 4, 1967?

A Yes.

MR. LESCH: I offer Exhibit 15 in evidence.

MR. PENNOYER: Objection on relevance.

gawe Samuels - direct [66]

THE COURT: Relevancy?

MR. PENNOYER: Yes, sir.

THE COURT: Let me see it.

(Pause.)

THE COURT: What is the relevancy of this, Mr. Lesch?

MR. LESCH: The relevancy is, your Honor, that although they followed the practice that is required by one of the paragraphs in Defendant's Exhibit A, the finder's fee agreement with respect to Pride Mills, they did not follow that practice with respect to Thomasville.

MR. PENNOYER: May I speak to that, your Honor?

THE COURT: Sustained.

(Plaintiff's Exhibit 16 marked for identification.)

Q What is Exhibit 16 for identification, Mr. Samuels?

A This is a letter written by me.

Q Did you mail that letter to Mr. Binns, B-i-n-n-s, Mr. Donnelly and Mr. Banzhaf on July 5, 1968?

A Yes, my secretary did.

Q Did you sign the letter before it was mailed?

A I dictated this letter. It was signed by my secretary.

Q All right.

A I was out of town at the time when I first read

gawe Samuels - direct [67]

of this merger.

MR. LESCH: I offer Exhibit 16 in evidence.

MR. PENNOYER: Objection on relevance grounds.

THE COURT: May I see it?

(Handing)

THE COURT: What is the pertinence of this?

MR. LESCH: This shows he demanded compensation under the agreement as soon as he learned that the Armstrong, Thomasville merger had been consummated.

THE COURT: What do you say, Mr. Pennoyer?

MR. PENNOYER: The fact he made a demand doesn't establish his right to anything, your Honor.

THE COURT: I don't think it does. I will take it for the limited purpose of showing a demand, that's all.

(Plaintiff's Exhibit 16 for identification received in evidence.)

THE COURT: This, of course, was after the January ;67 letter.

Between January 11, 1967 and July 5, 1968, did you in any way contact Thomasville?

THE WITNESS: Yes, I did, Judge.

THE COURT: Go ahead.

Q What did you do?

A On or about--the early part of February I spoke to

gawe Samuels - direct [68]

Donnelly --

THE COURT: What year?

THE WITNESS: 1967. I spoke to Donnelly again. He said, "Finch was kidding you"--

THE COURT: He said what?

THE WITNESS: He said, "Finch was kidding you when you saw him in Chicago. We think he is still available and you better bring him in, find out if he wants to make a merger, find out whether he wants to make a merger with us or with somebody else."

THE COURT: What did you do, if anything?

THE WITNESS: I telephoned Mr. Finch and finally got him on the telephone.

THE COURT: Where were you when you telephoned and where was he, as far as you know.

THE WITNESS: I was in my office and he was in his factory.

THE COURT: He was where?

THE WITNESS: In his factory.

THE COURT: North Carolina, right?

THE WITNESS: Right. I had about eight or ten minutes of conversation with him. I asked him if he remembered me. He said, "Yes, I do. I remember you well."

I said, "Would you like to meet with a very fine

gawe Samuels - direct [69]

firm again with respect to a merger?"

He said, "Who is it?"

I said, "Well, it is a company in Lancaster, Pennsylvania in the flooring business. Do I have to tell you any further?"

THE COURT: In the what?

THE WITNESS: In the flooring business.

THE COURT: Yes.

THE WITNESS: Armstrong is known for its Armstrong floors and ceilings.

THE COURT: What did he say?

THE WITNESS: He said, "Yes, I would."

I said, "They would like to meet with you at their bank, which happens to be your bank in I think it was Wachovia, North Carolina. Either I will call you to set up the appointment or Mr. Donnelly will call you to set up the appointment."

He said, "Fine."

Then I saw him again at the show in the summertime. I met him in Chicago.

THE COURT: When?

THE WITNESS: Sometime in June 1967. He says, "No, the deal is off. You made a very good pitch, good effort, but I am not going to go through any merger."

gawe Samuels - direct [70]

THE COURT: Who said that?

THE WITNESS: Finch.

THE COURT: Of which company?

THE WITNESS: Thomasville. He said, "You bring me some deals."

I said, "I told you what my position was the last time I met you. I'm still under commitment to Armstrong."

THE COURT: That is what you said to him?

THE WITNESS: Yes, sir.

"I can't give you any deals at this time."

THE COURT: So you represented to Thomasville at that time you were still authorized to go ahead.

What was the basis of that again?

What was the basis of your telling him that you were still under commitment to Armstrong?

THE WITNESS: He asked me to get him some deals. He said he would rather be--

THE COURT: Who is, "he"?

THE WITNESS: Mr. Finch. He said he would rather be be an acquirer rather than being acquired.

THE COURT: That put the shoe on the other foot, didn't it, and meant that you were to act for Thomasville, didn't it?

THE WITNESS: That's right.

gawe Samuels - direct [71]

THE COURT: I don't know what that has to do with this case. It is a peculiar situation, counsellor.

MR. LESCH: The only reason I brought it out was because your Honor indicated interest. Our case rests on the contention that this contract was terminated in bad faith in January of 1967.

THE COURT: Yes. I have taken this testimony, if it is, solely in regard to seeing that there was anything done after January 1967, after the letter. I'm not certain at all that whatever might have been done is in any way compliance with the contract or that the contract wasn't terminate in January.

Any further testimony now?

MR. LESCH: Yes.

Q Mr. Samuels, did you discuss B. T. Babbitt and Company--

THE COURT: We are getting on to the other?

MR. LESCH: Yes.

Q --with anyone from Armstrong in 1966?

A Yes.

Q When for the first time?

A Sometime in the latter part of October or the early part of November.

Q Who from Armstrong did you discuss that with?

gawe Samuels - direct [72]

A Discussed it with Mr. Donnelly.

Q What did Mr. Donnelly say to you and what did you say to him about that?

A He said, "They are very much interested in exploring that and seeing whether they can buy it."

Q After you spoke to Mr. Donnelly, did you speak to the owners of B. T. Babbitt Company?

A Yes, I did.

THE COURT: If I may interrupt a second or two. The only issue here, as I understand it, is whether or not the $9,000 covered everything and whether or not it covered some goods in inventory.

MR. LESH: That's right, yes.

THE COURT: What do you have to show that the contract covered inventory? That is the principal issue, isn't it?

MR. LESCH: Yes, your Honor.

THE COURT: What do you have on that?

MR. LESCH: What I have on that, your Honor, are the documents, Exhibits 4 through 9, which counsel has said that he wants to examine in greater detail during the luncheon recess. Otherwise, I will have to have someone come in from Armstrong to authenticate those.

THE COURT: Who paid the money on that deal,

gawe Samuels - direct [73]

Babbitt or Armstrong?

MR. LESCH: Armstrong.

THE COURT: Do you have proof as to how much Armstrong paid?

MR. LESCH: Yes.

THE COURT: Get that in.

MR. LESCH: I can't do that through this witness, your Honor.

THE COURT: All right.

Anything else then with this witness?

MR. LESCH: Yes, your Honor.

May we have this marked for identification.

x (Plaintiff's Exhibit 17 marked for identification.)

Q Is this a letter that you received from Mr. Donnelly on or about November 8, 1966?

A Yes.

MR. LESCH: I offer Exhibit 17.

MR. PENNOYER: No objection.

THE COURT: Received.

xx (Plaintiff's Exhibit 17 for identification received in evidence.)

THE COURT: This doesn't show anything with respect to inventory, does it?

gawe Samuels - direct [74]

MR. LESCH: No, your Honor.

THE COURT: Any objection to this? Apparently not. It is marked in evidence.

Q After you received Exhibit 17, did you arrange a meeting between officers of Armstrong and officers of B. T. Babbitt and Company?

A Yes.

Q After that did you learn that Armstrong had, in fact, acquired assets of B. T. Babbitt and Company?

A I knew they made some kind of a deal. I didn't know exactly what they acquired except what Mr. Donnelly told me on the telephone.

THE COURT: All right.

Q After that did you receive a check in the amount of $9,000?

A A year later.

THE COURT: Did you render any bill?

THE WITNESS: No, sir. I couldn't render a bill because--

THE COURT: Never mind that. I just asked you if you rendered a bill. You heard about the acquisition?

THE WITNESS: I heard about the acquisition sometime during the year of '67.

THE COURT: When did you get the check? Where is

gawe Samuels - direct 75

this check?

THE WITNESS: In the latter part of '67. I got it one year after he talked to me about cutting my commission.

THE COURT: You never sent any bill?

THE WITNESS: No, sir.

THE COURT: All right.

THE WITNESS: I had no way to send a bill.

THE COURT: Strike that.

Q Did you receive Exhibit C in evidence shortly after December 12, 1967?

A Yes.

Q With that exhibit did you receive a check for $9,000?

A Yes.

Q After you received that check, did you have a conversation with Mr. Donnelly about the amount of your payment for services in connection with the Babbitt acquisition?

A Yes.

Q When did you have that conversation?

A I called him the early part of '68.

THE COURT: Haven't we been over this?

MR. LESCH: Yes, we have.

THE COURT: All right. He demanded more. That's the gist of it.

MR. LESCH: Yes.

Q You demanded more in that conversation?

A Yes.

THE COURT: More than 9,000?

A I also asked him, "What's doing in the other deals?"

THE COURT: That doesn't cut any ice here.

MR. LESCH: I have no further questions.

THE COURT: All right.

CROSS EXAMINATION

BY MR. PENNOYER:

Q Mr. Samuels, I would like for you to tell me now again each of the occasions on which you had a conversation with Mr. Finch.

I recall the first one was at the Brandise Dinner.

THE COURT: If you are going to ask him, why do you go on and tell it?

MR. PENNOYER: I'm just starting it off, your Honor.

THE COURT: He ought to be able to start it.

Q When was the first one?

A The first one was at the Brandeis Dinner. I met informally. I was introduced to him and we shook hands.

Q All right.

gawe Samuels - direct 77

A I knew about him previously, but I hadn't met him formally.

Q The conversation at that time was: hello, how are you?

I'm Harry Samuels?

A Right. I was introduced to him as Harry Samuels.

THE COURT: He said it several times. It doesn't add anything.

Q When was your next conversation with Mr. Finch, either by phone or face to face?

A I know I tried to get him--

THE COURT: No. When did you get him, not when you tried to get him?

THE WITNESS: Judge, it is very difficult.

THE COURT: It is your difficulty, though. It is not mine. Can you answer that question?

THE WITNESS: I'm thinking, Judge.

THE COURT: There's no law against thinking either.

THE WITNESS: The sequence of events, the reason I put that postscript--

THE COURT: Don't get into that. We don't want to have your explanations of postscripts. If you can't answer, just say you don't recollect.

gawe Samuels - cross [78]

THE WITNESS: I don't have a present recollection, although I could have spoken to him--

THE COURT: We are not concerned with when you could have spoken with him. That could have been at many occasions.

Go ahead, next question. He doesn't know.

Q Did you have another conversation with Mr. Finch at any time after the Brandeis Dinner until today?

A Ihad a conversation with him--

THE COURT: Just yes or no, will you.

A Yes, I did.

Q All right.

When was that conversation, the next one.

A It was sometime prior to the date that I met him in Chocago on the 10th of January 1967. I think he either I or my secretary made an appointment with him. I think I made the appointment with him.

Q Did you talk to him on the occasion of that appointment?

A Yes, I did.

Q Where were you and where was he?

A I was in my office in New York and he was down in Thomasville somewhere.

Q Can you fix the month?

gawe Samuels - cross [79]

A It must have been the latter part of December because I went to Chicago in January.

Q You say it must have been. I'm asking for your recollection as to when it was.

A The sequence of events is such, Mr. Pennoyer-- I handle hundreds of deals in my office, hundreds. I just can't specify each particular date.

The sequence of events tells me that I called to make an appointment with him.

THE COURT: That's your best recollection?

THE WITNESS: That's my best recollection.

A I talked to him. He said, "Yes, come into see me in Chicago."

I told him I wanted to talk to him about Armstrong.

Q You now have a specific recollection of speaking to Mr. Finch to make an appointment for a Chicago date?

A I'm sure of that. Otherwise, how would I see--

THE COURT: Strike out because. You are arguing with the lawyer.

THE WITNESS: I'm sorry, Judge.

THE COURT: Stop it. Just answer his questions.

Q That's the second time you say you spoke to Mr. Finch, sometime by phone in December of 1966, correct?

A Yes, and then by phone in March 1967.

Q I want to get the third time. The third time was the time you say you met him in Chicago at the market in January, I think January 10th.

A Right.

Q The third time?

A Yes.

Q Right,

A The third, right.

Q The next time after that was what?

A It was sometime in March 1967.

Q Can you fix the date in March?

A I think it was before the middle of the month.

Q Before the middle of the month?

A Yes.

Q Was this a phone conversation?

A Yes.

Q All right.

After that conversation what was the next conversation that you had with Mr. Finch, by phone or in person.

A I met him in person again in the summer of 1967 in Chicago.

Q All right.

You gave a deposition in this case. Actually you

gawe Samuels - cross [81]

gave it on two separate days. You gave it on August 7, 1969.

Do you recall that, Mr. Samuels?

A Yes, sir.

Q In our office, and you were under oath, and you were asked questions and you gave answers?

A Yes, sir.

THE COURT: He knows what that means.

Q The question is on page 12.

THE COURT: Is there a deposition in the file?

MR. PENNOYER: We have an extra here, Judge.

THE COURT: I will follow it if you have one.

Q Line 8: "Question. Did you have any other conversation either personally or by phone with Mr. Finch between the dinner in 1963 and the telephone call in March 1967?

"Answer. Between that time, no."

Do you recall giving that answer to that question.

A I do, yes.

Q Was that true when you said it?

A Well, I thought--

THE COURT: Was it true or not?

A When I said it at the time, I thought it was true. My lawyer showed me some documents that were in my file which

gawe Samuels - cross [82]

refreshed my recollection to the extent that he showed me an addmission by Mr. Finch that he got a telephone message from me and that he--whether he spoke to me or not, I don't know. I do remember him saying that he saw me in Chicago on January the 10th, 1967.

THE COURT: When did you sign this deposition, do you know?

MR. PENNOYER: There are two volumes, your Honor. The second one is signed--

THE COURT: When does it appear that he signed it? It is a matter of record.

MR. LESCH: October 19, 1971.

THE COURT: Is there any indication, Mr. Pennoyer, that he changed that answer before he signed it?

MR. PENNOYER: There is no indication that he changed that answer.

THE COURT: So let the record show.

Q Mr. Samuels, are you telling us that you have read a deposition given by Mr. Finch?

A I have been told about it by My lawyer.

THE COURT: Didn't you read it?

THE WITNESS: No, they didn't give it to me to read.

THE COURT: Before you signed it you never read it?

gawe Samuels - cross [83]

THE WITNESS: He's not talking about that.

THE COURT: Read the question that Mr. Pennoyer asked.

(Question read.)

THE WITNESS: No, I did not.

nd 3

jqsg 1 Samuels-cross (84)

Q So your lawyer has told you something which now refreshes your recollection some six years after the event, is that correct?

A That and also he called my attention in my file I had a memorandum that I made for Justice Arthur Goldberg who I was going to retain in this case.

THE COURT: What is that?

THE WITNESS: I had a memorandum in my file of a meeting I had with Justice Arthur Goldberg.

THE COURT: Ex Justice you mean.

THE WITNESS: Yes. I sent him a statement of this case and in the letter I said that I met with Mr. Finch January 10, 1967. I had gone through several illnesses before that time --

THE COURT: Yes.

THE WITNESS: I was more interested in my health than the lawsuit.

THE COURT: That doesn't help us much.

Q After you gave this deposition --

MR. LESCH: Mr. Samuels.

Q After you gave this deposition on August 7, 1969 there was then a period of -- between your next deposition on February 2, 1971, do you recall that, when you gave a second deposition in February?

[85]

jqsg 2 Samuels-cross

A Yes.

Q In the course of that second deposition on page 68 where you were asked this question, Mr. Samuels,

"Q Have you had an opportunity to read the transcript of your prior deposition before coming here today?

"A Yes.

"Q Is there anything in the prior transcript that you would like to correct or add?

"A Nothing special."

So that you did read this deposition of August 1969 before you gave the second one, isn't that correct?

A There was at that time a couple of months before I had a little stroke and I was more interested in my health --

THE COURT: I move to strike that out. I am tired of having excuses for something without an answer to the question, Mr. Lesch. He doesn't answer the fundamental question. Read the question again.

(Question read.)

THE COURT: Answer the question.

Do you understand the question?

THE WITNESS: Yes, Judge.

(86)

jqsg 3 Samuels-cross

THE COURT: Answer it.

THE WITNESS: Yes. The answer is yes.

THE COURT: What you said doesn't answer it.

THE WITNESS: My answer was that I had read it.

THE COURT: Now you say you had read the first deposition before you came onto the second deposition, is that right?

THE WITNESS: That is right. But I didn't know about this other information that my lawyer showed me from the records at that time. I couldn't refresh my recollection.

THE COURT: All right.

Q Then after you gave the second deposition in February 2, 1971 you received a copy of both transcripts and read them?

A That is right.

Q And signed it?

A I suppose so, yes.

Q Under oath again?

THE COURT: Signed what?

After he received both copies you are asking him if he signed what?

MR. PENNOYER: He signed the deposition as a whole, didn't you?

THE WITNESS: That is right.

Q Under oath again?

A Well, I took the oath at the beginning so I imagine --

THE COURT: You took it at the end too, didn't you?

THE WITNESS: I don't think so.

THE COURT: Doesn't it show that at the end? You haven't practiced law in a long time but it's customary to sign at the end before a Notary.

Q I show you page 186 of your second deposition and ask you if it doesn't show that you signed it before a Notary by the name of Agitha Argyros?

A Yes.

Q Under oath on that day?

A Yes.

Q Do you claim that you consummated the Thomasville merger with Armstrong?

A I don't know what you mean by consummated.

THE COURT: You are an attorney. You should know what consummate means.

THE WITNESS: If they don't give you an opportunity to consummate, how can you consummate it?

They don't tell you anything --

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jqsg 5 Samuels-cross

THE COURT: You may move to strike it out.

THE COURT: You may move to strike it out.

MR. PENNOYER: I so move.

THE COURT: Strike it out.

Q Do you claim that you consummated the Armstrong-Thomasville merger?

MR. LESCH: I object to the form of the question.

THE COURT: You may ask it again in other verbiage.

MR. PENNOYER: This is the verbiage of the contract.

THE COURT: Did it say consummated in the contract?

MR. PENNOYER: It does.

MR. LESCH: I nevertheless object on the grounds that it's impossible for Mr. Samuels to consummate --

THE COURT: Yes, it should be to bring about the consummation, counsellor, as I read it. The parties are the only ones who can consummate.

MR. PENNOYER: The contract reads, and this is Defendant's Exhibit A on page 2, number 6 "We will pay you as a fee a sum of money equal to three per cent of the total consideration paid by us for an acquisition found and negotiated and consummated by you on our behalf."

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THE COURT: Is it stipulated who wrote this paper?

MR. PENNOYER: Your Honor, the draft suggestion was sent by Mr. Samuels.

THE COURT: The final. The draft superseded by another paper, isn't it?

MR. PENNOYER: Armstrong took his draft and wrote the final.

THE COURT: I beg your pardon?

MR. PENNOYER: He wrote the final version.

THE COURT: Who did?

MR. PENNOYER: Armstrong did, your Honor.

THE COURT: There is no indication of any attorney on the case as far as the final copy by Armstrong is concerned.

I will sustain the objection to the form of the question.

Q Do you claim that you assisted in the consummation of the Armstrong-Thomasville merger?

A It didn't give me any opportunity to do so.

Q You are not claiming it then?

A That I assisted?

Q Right.

A To the extent I have already testified, it's my

jqsq 7 Samuels-cross 20

opinion that I assisted, yes.

Q And you regard that as assisting in the consummation of the Thomasville-Armstrong merger?

A Yes, I do.

Q How about negotiate?

Do you claim you negotiated the Thomasville-Armstrong merger?

A To the extent I testified, yes, I did.

Q You call that negotiating?

MR. LESCH: I object. It's been asked and answered.

THE COURT: Overruled.

Q Do you recall that negotiation?

What you testified to today, that is.

A Yes, I think so.

THE COURT: Did you ever discuss with the president of Thomasville, is that Mr. Finch?

THE WITNESS: Yes.

THE COURT: The terms of any agreement with Armstrong?

THE WITNESS: No, sir.

THE COURT: That is enough for me at least at this point.

Q Do you claim you found Thomasville for Armstrong?

jqsg 8 Samuels-cross 61

A Yes.

Q What did you do that you say constitutes finding Thomasville?

A I apprized them of the fact that it was available as a merger candidate. You people have been in touch with them with respect to selling the merchandise. Never have they even suspected that Mr. Finch or Thomasville would be available as an acquisition until I brought that to their attention.

THE COURT: You may move to strike out that answer except as to everything including "never" and what follows.

MR. PENNOYER: I so move.

THE COURT: Strike it.

Q Mr. Samuels, on what basis did you know that Thomasville was available for acquisition?

A It's been my experience to go through the merchandise mart and the furniture mart twice every year during the market shows and in traveling around those circles you hear things by sales managers, salesmen, presidents of companies.

THE COURT: Did you ever hear anything from anybody connected with Thomasville?

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jqsq 9 Samuels-cross

THE WITNESS: Nobody connected with Thomasville direct, no, sir.

Q Nobody connected with Thomasville had ever told you that Thomasville was available for acquisition?

A No, sir.

Q And the only conversation you ever had on that subject with Thomasville gave you a negative answer, didn't it?

A Except that conversation I had with them on the telephone where they said to come in to see them.

THE COURT: When?

THE WITNESS: On both occasions.

THE COURT: When?

THE WITNESS: In December '66 and in June -- January '66 and in June -- January '67, I am sorry, and June '67, both at the show, at the furniture show.

THE COURT: Those occasions were both after this letter, of course, of January 10, right?

THE WITNESS: One was before and one was after.

THE COURT: Which one was before?

THE WITNESS: The one when I met them on January 10.

THE COURT: Yes, seven days before.

THE WITNESS: As soon as I got my conversation of

(93)

jqsg 10 Samuels-cross

my results they cancelled me out.

THE COURT: Did you call them the same day you say you had the conversation with Finch?

THE WITNESS: Yes, sir.

THE COURT: In January. Whom did you call?

THE WITNESS: Mr. Donnelly.

THE COURT: Did you testify about that conversation in your direct testimony?

THE WITNESS: Not at that time. It was at that time I didn't know.

THE COURT: Here in court.

THE WITNESS: Yes, sir.

THE COURT: What did Finch tell you on that day? Did he say he was interested?

THE WITNESS: No, at that time he said no. He said "Let's let it go for a while. I am not interested."

THE COURT: In other words, prior to the 10th of January, if that is the right date in 1967, the date of this alleged determination, nobody from Thomasville ever said he was interested, isn't that so?

THE WITNESS: He agreed to meet with them --

THE COURT: That is a different thing. Can't you answer a simple question? You are an attorney --

THE WITNESS: I can't see how I can answer.

THE COURT: Did anyone indicate any interest, any man from Thomasville, before January 10, 1967? I am irritated because you don't try to answer me.

THE WITNESS: I am sorry, Judge. Yes, I did. I testified to that before that postscript went under my letter and before that meeting that I had, I had talked to Mr. Finch and then in December before going to Chicago.

THE COURT: I am not asking you if you talked to Mr. Finch. I am asking you whether Mr. Finch gave you any indication that Thomasville was interested.

THE WITNESS: He agreed to meet with Armstrong and he is the spokesman.

THE COURT: That is nonsense. I will take the answer if that is the only answer you can make.

THE WITNESS: He is the spokesman --

THE COURT: There is no question before you now. You don't answer my questions directly.

Q Mr. Samuels, I want to go back to your testimony to the effect that you assisted Armstrong in the Thomasville negotiations and I will ask you if you were asked this answer or rather this question and gave this answer in your deposition of February 2, 1971, page 180, and my question was:

"Q What other work, labor and services referred

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jqsg 12 Samuels-cross

to in paragraph 12 of the complaint which you say you performed?

"A Well, services go back from the time that I first met Armstrong many, many years and the investigation travel and finding out the available companies and making the necessary connections, making the necessary meetings, getting the necessary introductions to prepare for their type of work. I showed them maybe 40 or 50 or maybe 60 or 70 companies during this period among which was Thomasville. And not permitting me to do any further work in negotiating the deal my work stopped. When I introduced them into the deal with Mr. Finch and I asked them to permit me to negotiate further and they wouldn't let me."

Did you give that answer to that question?

MR. LESCH: May we have the last sentence?

THE COURT: One sentence more you'd better put in.

Q "A They didn't keep me advised of it and that is the reason for the lawsuit."

Did you give that answer to the question?

A I must have.

Q Was it truthful when you gave it?

A I imagine so.

THE COURT: Is that the best answer you can give,

you imagine so?

THE WITNESS: Yes, it must have been.

THE COURT: You know Courts don't ordinarily consider imagination.

Q Then I show you paragraph 5 of the verified complaint.

Paragraph 5 reads:

"Although plaintiff offered to negotiate and consummate the said acquisition of Thomasville on Defendant's behalf plaintiff was requested by defendant not so to do" and paragraph 6 which follows:

"As a result of plaintiff's efforts defendant entered into negotiations with Thomasville which resulted in the acquisition of Thomasville by defendant by means of a merger on or about November 1, 1968."

I won't finish that sentence. The question is Mr. Samuels: You are aware that this is a verified complaint, are you not?

A Yes, sir.

THE COURT: Who verified it?

Q Was it verified by you on the 16th day of June, 1969?

A Yes, sir.

Q That is your signature?

A Yes, sir.

Q And sworn to before a Notary?

A Yes, sir.

Q Could you now tell us how many visits you paid to Armstrong in Lancaster in 1966?

A Three visits.

Q When was the first one?

A The first one was on August 10, the second one was August 25 and the third one was the early part of September.

Q And, in fact, was there another visit on July 22, 1966?

A No, I hadn't at that time known anybody connected with Armstrong.

Q Do you recall on one of the visits before you signed the contract dated August 25, 1966, being brought into Mr. Binns' office by Mr. Donnelly?

A I might have been, I don't remember exactly. I think he came into the room where we were sitting.

Q Isn't it a fact that Mr. Binns' told you on that occasion that Thomasville was a matter that they would, Armstrong, handle itself and you were to have no part of it?

A Absolutely not. I never discussed Thomasville with

Mr. Binns. That is, up to the time I wrote him the letter asking for a commission on it.

Q But you say that the word or the name Thomasville was first mentioned by you?

A That is right.

Q In the discussions with Armstrong?

A That is right. I mentioned it at the table in the country club when we had lunch and Mr. Binns didn't react to it at all.

THE COURT: Who didn't?

THE WITNESS: Mr. Binns, the then vice president and the present president.

They were all delighted that I was there and I was giving them this information.

THE COURT: They didn't seem interested, did they, is that what you mean?

THE WITNESS: Very much interested.

THE COURT: Interested?

THE WITNESS: Yes.

THE COURT: Who said anything about that?

THE WITNESS: Mr. Donnelly told me.

THE COURT: But Binns was contrary.

THE WITNESS: No, Binns was not contrary. Binns was delighted. They were all delighted with me.

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Q What did Mr. Binns say about Thomasville?

A He said wonderful, just wonderful.

Q You said the name Thomasville --

A He didn't say it only with respect to Thomasville. Thomasville was bunched with Mohasco and Kroehler because the three of them were in a kindred kind of business, the same composition financially, the same listing. All were listed on the New York Stock Exchange.

THE COURT: It wasn't particularized as Thomasville?

THE WITNESS: All bunched together.

THE COURT: That is what I say.

Q And you say Mr. Binns said about Thomasville that it was wonderful?

A Yes. Mr. Donnelly went over the Mohasco sheet, he passed the sheets around and he said wonderful about Mohasco, wonderful about Thomasville, and wonderful about Kroehler.

THE COURT: Are you saying the sheets were passed around separately?

THE WITNESS: To all the people sitting around the table.

THE COURT: And as the sheets came around every one

jqsg 17 Samuels-cross [109]

of those people said "wonderful" after each one?

THE WITNESS: Right.

Q And who were the others that said this besides Binns?

A Mr. Pennoyer, they were all delighted I was there --

THE COURT: Were delighted, of course, isn't admissible.

Q Who said wonderful besides Mr. Binns?

A Everybody there.

Q Who was everybody?

A Mr. Painter was there.

Q Who else?

A I think Harry Jenson was there too.

THE COURT: Who was he?

THE WITNESS: He was one of the vice presidents.

Q How about Mr. Warnock?

A Warnock I don't think stayed at our table. He went over to another table.

Q Did Mr. Warnock say anything about Thomasville?

A Not that I remember. I don't think he stayed at our table. They were all delighted with the deals I was discussing with them.

THE COURT: You may, if you like, move to strike out "They were delighted." That is something else.

MR. PENNOYER: I will leave that in, your Honor.

THE COURT: All right. It may show something about the situation. I am not certain.

Q What did you understand to be the organization of the acquisition group at Armstrong?

THE COURT: What do you mean by that?

Q Did you understand that there was a group of officers involved in acquisitions at Armstrong?

MR. LESCH: I object to what he understood.

THE COURT: Sustained as to form. What he understood isn't important.

MR. PENNOYER: It will become important in view of the position.

THE COURT: Are you indicating that because of whom he was dealing with?

MR. PENNOYER: It relates to the testimony about Mr. Donnelly and the request that certain matters be kept under the table.

THE COURT: What is your objection, Mr. Lesch?

MR. LESCH: I just object as to the form of the question.

THE COURT: Just as to form?

jqsg 19 Samuels-cross 102

MR. LESCH: Yes.

THE COURT: Can you reframe it?

Q Were you told there was an acquisition group working at Armstrong?

A Yes.

Q Were you told who the members of the group were as of July-August 1966?

A All I knewwas Banzhaf was head of the committee and Donnelly.

THE COURT: Who?

THE WITNESS: Mr. Banzhaf. And Donnelly was on the committee. I don't know anyone else.

Q Head of what committee?

A The acquisition committee.

Q Weren't you, in fact, told that Mr. Banzhaf was the head of a furniture sub-committee of the acquisition committee?

A I don't believe I ever heard of any sub-committees in the committee.

Q Weren't you told that Mr. Binns, the executive vice president, was head of the overall acquisition committee?

A I never heard of him in connection with the acquisition committee.

jqsg 20 Samuels-cross [103]

Q Referring to Plaintiff's 11A, this is the draft contract which you sent to Armstrong as a suggestion for a contract with your letter of August 12, 1966?

A Yes.

THE COURT: Exhibit 11?

MR. PENNOYER: It is Exhibit 11.

Q In the wording that you proposed for the contract didn't you say, and this is in the form of a suggested letter to Mr. Samuels, "Dear Mr. Samuels, after the discussions that members of our executive staff had with you, namely Messrs. Warnock, president, Binns vice president and Donnelly treasurer", now you knew Mr. Binns at that point in time, didn't you?

A Yes.

Q And you knew that he was the executive vice president?

A Yes, sir.

Q Didn't you also know that he was the head man in the acquisition group?

A No, sir. I was told he was slated for the presidency by Mr. Donnelly, that is all.

Q But you understood then that Mr. Banzhaf was the head of the acquisition committee?

A That is right. And they were very displeased with him.

Q You say they were very displeased with him. Who told you that?

A Mr. Donnelly.

Q When did he tell you that?

A He told me that the second time I was there when he asked me to write a letter so they could cancel the purchase of Morgan. It seems that Mr. Banzhaf was about to sign a contract for the acquisition of Morgan and he wanted me to kill the deal, write a letter. He said not to embarrass Mr. Banzhaf, make it look good and make it look bad so we have something to hang our hat on to cancel it.

Q I asked you when he said that.

A August 27.

MR. PENNOYER: I move to strike all the answer except the date.

THE COURT: Yes.

Q What were the words Mr. Donnelly used in saying in substance that they are very unhappy with Mr. Banzhaf?

A That is right, because he knew nothing --

Q What words did Mr. Donnelly use?

A He said "The committee or the management of the

company or the directors", I don't remember exactly which it was, it was the company, they were unhappy with him because there was a wave of acquisitions and mergers at that time in the industry and they hadn't done a thing and they were unhappy with him and particularly were they unhappy about the fact that he wanted to buy this Morgan Company which was just a manufacturer of dimension stock. It wasn't putting them in the furniture business. It made parts and pieces sold to various furniture manufacturers who use them in putting together furniture.

Q Have you said everything you recall that Mr. Donnelly spoke to indicate unhappiness with Mr. Banzhaf?

A Yes, he says "Keep that strictly confidential between you and me and try to save his neck."

THE COURT: You were just asked if you said everything and then you go on with another statement.

Have you said everything at this point, this minute? Have you said everything?

THE WITNESS: May I complete it, Judge?

THE COURT: That is what you were asked to do but not to speak in generalities.

THE WITNESS: We spoke for hours about this

situation. If you want me to spend the hours repeating it, I will try to remember everything that was said about this time. This went on and on and on, hour after hour.

Q What went on?

A Conversations about Banzhaf, Thomasville, about Mohasco, about Johnson Carpet, about Kroehler. We went to see the Kroehler Company. I went to Chicago.

THE COURT: Are you saying that all this time that is going on from day to day was to ask you to get rid of the idea of purchasing this other company?

THE WITNESS: Part of the conversation, Judge.

THE COURT: I think you have enough on that counsellor.

Q Wouldn't you agree, Mr. Samuels, that you had or that you corresponded in writing with Armstrong from time to time during the period August 1966 through June of 1967?

A I don't know whether it was June 1967. I know it was early 1967. I don't think I had any correspondence in June, unless you have it.

MR. PENNOYER: I am going to request there be marked a group of letters from Mr. Samuels or Mr. Samuels' office addressed to Armstrong.

THE COURT: You want them marked as one exhibit?

MR. PENNOYER: Yes.

THE COURT: How many are there?

MR. PENNOYER: There are 14.

THE COURT: One exhibit and then they may be marked, if special attention is called to one or more, separate exhibits.

(Defendant's Exhibit D marked for identification.)

THE COURT: Have you seen these, counsellor?

MR. LESCH: I imagine we have.

THE COURT: It's about a quarter of one. We will recess until 2 o'clock.

(Luncheon recess.)

gwsg [108]

AFTERNOON SESSION

2:00 p.m.

H A R R Y S. S A M U E L S, resumed.

THE COURT: You may proceed, Mr. Pennoyer.

CROSS EXAMINATION (CONTINUED)

BY MR. PENNOYER:

Q Mr. Samuels, I show you Defendant's Exhibit D for identification and ask you if this group of letters is a group of letters sent by you or by your office to Armstrong?

A Yes, these are all from my office.

THE COURT: All right.

Q Each of them suggests a company to Armstrong?

MR. LESCH: I object.

THE COURT: Sustained. They speak for themselves. You signed all these, didn't you, Mr. Samuels?

THE WITNESS: Yes, either I or one of my associates signed them, yes.

THE COURT: I haven't seen them yet. You finish up with them first.

You signed all of them or somebody from your office signed them; is that right?

THE WITNESS: Yes.

MR. PENNOYER: I offer Defendant's Exhibit D

in evidence.

MR. LESCH: No objection.

(Defendant's Exhibit D for identification received in evidence.)

THE COURT: There are a lot of companies involved here, at least mentioned, I should say.

MR. PENNOYER: Shall I go ahead, your Honor?

THE COURT: All right.

I don't know whether these are admitted for what they show or what they don't show.

Q Mr. Samuels, would you agree that at no time did you ever write Armstrong with the name Thomasville in any communication?

A I do not agree.

THE COURT: What's that?

THE WITNESS: I do not agree.

Q Do you know of any paper that you sent to Armstrong with the name Thomasville in it?

A Yes, the letter that I wrote to Banzhaf, a copy to Donnelly, with the name of Tom Finch on it.

Q My question, and you are a lawyer, was: Is the name Thomasville in any communication to Armstrong?

A Well, Tom Finch and Thomasville --

THE COURT: Listen, why don't you answer the

question. You attempt to allude, counsellor.

THE WITNESS: Sorry, Judge.

A No, I did not.

THE COURT: Why didn't you say so in the first instance?

Q Referring to the letter to Mr. Banzhaf of October 10, which has been marked Plaintiff's Exhibit 13, October 10, 1966, you have already told us that the original of that letter was sent to Mr. Banzhaf?

A Right.

Q You didn't put the handwritten note on Mr. Banzhaf's original?

A Right.

Q Before you wrote that letter, Mr. Samuels, hadn't you been on a trip to visit Kroehler Company in Chicago?

A I think it was after I wrote the letter.

Q You think it was after?

A Yes.

Q The trip I have reference to was one in the company of Mr. Banzhaf and Mr. Donnelly.

A Yes.

Q Do you recall that trip?

A Yes, I recall the trip vividly, but I don't

remember the date.

Q You think it was in September or October?

A I think it was in October.

Q During the course of that trip, Mr. Samuels, you spent a little time with both Mr. Banzhaf and/or Mr. Donnelly?

A I did, yes.

Q For instance, how long did you spend with Mr. Banzhaf?

A Mr. Banzhaf was with Mr. Donnelly most of the time, but I spent some time with Donnelly alone because we went to this meeting at Kroehler. We had lunch there with a number of executives and their attorney. Then we went back to Chicago. We stayed overnight at a motel near the airport and Donnelly and Banzhaf and I went to have dinner at one of the restaurants near the airport.

THE COURT: Read the question, will you, and listen to the question.

(Question read.)

A (Continuing) The whole day except for intervals of 15 or 20 or 30 minutes that I was with Donnelly alone. Banzhaf went to make telephone calls. He went here, there, everywhere.

Q And also the evening for dinner?

A Yes, that's right.

Q In the course of that day didn't you discuss Thomasville with Mr. Banzhaf?

A Yes, with Mr. Donnelly mostly. Mr. Banzhaf sat by and listened, most of the time, 99 per cent of the time.

Q What was the discussion on that day about Thomasville?

A Well, they compared Kroehler with Thomasville and with Mohasco. I said, "We don't know yet whether Kroehler is available" --

THE COURT: No. He asked you what the conversation was about Thomasville.

A (Continuing) Well, that was the conversation about Thomasville, if they don't buy Kroehler, they want me to pursue Thomasville, and pursue it very strongly.

Q Didn't they tell you at that time, during this day or evening, that Armstrong was pursuing Thomasville on its own?

A No, sir.

Q Didn't they tell you that Armstrong was going to a bank in North Carolina to meet with Mr. Finch?

A They asked me to contact Mr. Finch and to find out whether he will attend that meeting, the most important

thing --

Q Just a minute.

Did they tell you that a group of Armstrong people were going to go to North Carolina to meet Mr. Finch at a bank?

A That's right.

Q They did tell you that, didn't they?

A Not at that meeting, no. Not at that meeting, no.

Q Did they tell you that at any time?

A They told me that before the meeting, and that's why -- that's when I wrote them that postscript on the letter.

Q When before the meeting?

A A week or 10 days before the meeting.

Q They told you they were going to go to North Carolina to meet with Finch?

A Yes.

Q At a bank?

A With a banker.

Q So you were aware that Armstrong was pursuing the Thomasville matter to the extent they were going to meet with Finch on their own at the bank?

A It was not on their own, it was at my suggestion

that they did it. They didn't know until then that there may ever be a deal -- that Mr. Finch ever wanted to sell.

Q Were you invited to attend that meeting?

A I asked them --

THE COURT: No. Will you please answer his question.

Q Were you invited to attend that meeting?

A No.

Q In fact, you were told not to attend it, weren't you?

A I asked them to go to the meeting, and they said, "Not this one, maybe the next one."

Q Who said, "Not this one"?

A Mr. Donnelly said, "Maybe you will come to the next one, not this one."

Q When did he say that?

A When we discussed this meeting in North Carolina at the bank.

THE COURT: What time was it when you did discuss that?

THE WITNESS: About 10 or 12 days before I wrote that letter with the postscript on it.

THE COURT: What date, Mr. Samuels?

THE WITNESS: I think it was at the end of

September, the early part of October.

THE COURT: What year?

THE WITNESS: 1966.

Q You knew, therefore, that Armstrong was going to meet with Finch, and knowing that did you attempt to find out whether the meeting had taken place?

A Yes, I did.

Q And you were told that it had?

A Yes.

Q When were you told that?

A A few weeks -- about a week or 10 days after the meeting.

jqe 1 Samuels - cross [116]

Q Who told you that?

A Mr. Donnelly.

Q Where was he when he said it?

A On the telephone.

Q Where were you?

A In my office.

Q What did he say about it?

A He said "You pursue it on your own, it doesn't look to me as though they want to make any deal. He said find out definitely whether they are available for a deal, for a merger.

Q Did you ask him what happened at the meeting?

A I did. He said they discussed various other things. They just touched lightly on the possibilities of a merger and that he got, Donnelly got the impression that he did not make a merger at the time. He said pursue it and see what you can do.

Q I am asking you for what Donnelly told you. Did Donnelly tell you that I had the impression they were not interested in the merger at that time?

A I can't tell you those were the exact words but that was the general tenor of the conversation.

Q Was this all in one conversation?

A Yes.

jqe 2 Samuels - cross [117]

Q In fact, did not Mr. Donnely subsequent to that or at that time rather tell you that they invited Mr. Finch to come to Lancaster?

A No, he did not.

Q Didn't he tell you that at the subsequent time?

A He told me to pursue it only, find out if he wants tomerge.

Q You in fact knew by January 10 that Mr. Finch and a group of Thomasville people had come to visit Armstrong at Lancaster on three days in early January, didn't you?

A I did not know, no, because Mr. Donnelly kept on bugging me and telling me pursue him--

THE COURT: Doing what?

THE WITNESS: Bugging me.

THE COURT: What do you mean by that?

THE WITNESS: That is a slang word for pushing me, urging me.

THE COURT: What did he do?

THE WITNESS: He kept on telling me, don't you want to earn a fee, find out if he wants to sell.

Q In your business you have to move in a hurry, don't you, sometimes to make a fee?

A Yes, I do. I moved in a hurry all those months I worked for them.

jqae 3 Samuels - cross [118]

Q You said Mr. Donnely started to first ask you to find out if Finch was available in September?

A No, we discussed that in the meeting of August 10, August 25, the early part of September and subsequent to that. Every time I talked to him he said did you find out whether he wants to merge?

Q From August right through January?

A Right through June of 1967.

Q With all this urging, what you did was to try to get Mr. Finch on the phone a couple of times, is that correct?

A Well, then I saw him in Chicago.

Q But first you tried to call him on the phone?

A Yes.

Q Did you make a special trip to Chicago to see Mr. Finch?

A No, that was my yearly rounds that I made. Every year I went to the January and June shows of the furniture and warehouse industry.

Q You are making the trip anyhow?

A That is right.

Q I think you said this morning that you thought you remembered you had an appointment to meet with Mr. Finch in Chicago?

A That's right.

jqe 4 Samuels - cross [119]

Q You keep a diary, don't you?

A Yes, sir.

Q Do you have the diary?

A From what year?

Q From 1966.

A I had one and Internal Revenue examined me and it disappeared.

Q Do you have one for '67?

A Yes, sir.

Q This would be in the 1966 diary if it was there?

A If the appointment was there I believe it would be in the 1966 diary.

Q It is possible it wasn't there?

A Possibly.

THE COURT: Are you saying that the Internal Revenue Service kept your 1966 diary?

THE WITNESS: They must have, Judge.

THE COURT: I didn't ask you that. Did you try to get it back?

THE WITNESS: Yes.

THE COURT: When?

THE WITNESS: When they returned all my other papers and that was never returned as far as I can remember.

THE COURT: Did you ever write them about it?

jqe 5 Samuels - cross [120]

THE WITNESS: No, I did not. I didn't think I would need it.

Q Today you are telling us you think you had an appointment to meet with Finch in January at the Furniture Mart?

A That is right.

Q Where was the appointment meeting to be?

A It was to have been at his showroom in the Furniture Mart but I think he left word for me to come to this American Martinsville who had a display room in the Merchandise Mart.

Q You say you think he left word. Sitting there today on the stand, do you have a recollection of receiving a message that Mr. Finch was somewhere else and would meet you somewhere else?

A I got this message in his office in the Furniture Mart. That is why I went over to the Merchandise Mart which was mainly a display, a large building, very large building in Chicago which was a display of housewares and other household goods. Most of the large furniture companies had their display in the Furniture Mart.

Q When did the recollection of this message come to you? You recall this morning we determined that three years ago you had no recall of any conversations with Finch between

jqe 6 Samuels - cross [121]

January of '65 and March of '67.

But now you have this recall of a message you got at the January Mart?

A Right.

Q When did that come to you?

THE COURT: Will you please listen to his question and don't interrupt.

THE WITNESS: I know what he wants.

THE COURT: You interrupted.

Q When did that recall come to you?

A When my lawyer told me about the testimony of Mr. Finch that I saw him in Chicago in January and he also called my attention to the memorandum and letter that I sent to Ex-Justice Arthur Goldberg setting forth an outline of the case in which I stated in there--I have it with me if you want to see it.

I stated in there that I had a meeting with Mr. Finch on the 10th of January, I think it was.

Q This memorandum that you sent to Ex-Justice Goldberg, existed by the time you gave your deposition in August of '69, didn't it?

A Yes, but I had completely forgotten about it.

Q You had forgotten about it?

A Completely. My business keeps me so busy that I

have no time to think about those things.

THE COURT: All right.

You have no time to think in your business, is that it?

THE WITNESS: That is right, Judge, sometimes.

Q I show you again the plaintiff's Exhibit 13, the letter to Banzhof, footnote to Donnelly.

A Yes, sir.

Q I ask you why did you say "and since it is the least likely of the deals"?

A Because he had told me, Mr. Donnelly said with this large holding of Mr. Finch in the Thomasville Furniture Company, Mr. Finch and his family, it isn't likely that the management would consider it.

Q Even though it is not likely or you thought it wasn't likely why were you trying to stop Donnelly from seeing Mr. Finch?

A I had several reasons for doing that. One of them was that at that time I felt, through my conversations with hi, that somewhere along the line he is trying to do something to me, trying to do me out of a deal, do me out of the contract.

THE COURT: Who was?

THE WITNESS: Mr. Donnelly. He kept on telling

me not to mention anything about Thomasville in any correspondence that we have. That's why I put the postscript in that letter and didn't send it to Banzhaf because he didn't want anybody to know of my conversations with him about Thomasville.

I figured that I might as well put something in writing so that I have something in writing should anything come of this to connect me with Thomasville.

Q Would you agree that the one thing in writing would tend to discourage Armstrong from going after Thomasville?

A If they didn't want to buy it it wasn't my intention to stick them with anything. If they wanted to buy it, I kept the door open, if you will notice.

Q Mr. Samuels, what you were trying to do in this footnote was stop that bank meeting between Armstrong and Finch, isn't that correct?

A I didn't try to stop it. I told them it is my opinion that that should be done on a confidential basis, either between him and Thomasville and him and me and Thomasville.

Q Can you answer the question: Weren't you trying to stop the meeting at the bank between Armstrong and Thomasville by this footnote?

A No, sir. I just gave them a suggestion.

jqe 9 Samuels - cross [124]

THE COURT: May I see that again?

MR. PENNOYER: Yes, sir.

THE WITNESS: You will see the last sentence in that letter says that if you pursue it you might abort it. I didn't want to kill it.

THE COURT: What did you mean by that?

THE WITNESS: Kill it.

Q The meeting or the interest in Thomasville?

A Kill the Thomasville deal with Armstrong. I didn't want him to kill it. I wanted to keep it alive.

THE COURT: Do you have your '67 diary?

THE WITNESS: Yes, your Honor.

THE COURT: Where is it? Is it here?

THE WITNESS: My lawyer has it.

MR. LESCH: We have it in our office, your Honor.

THE COURT: Did you hear that, counsellor?

MR. PENNOYER: I am sorry, your Honor. He has his '67 diary?

MR. LESCH: We have it, yes.

THE COURT: Mr. Lesch has it.

MR. PENNOYER: I would like to see that if it is in court.

MR. LESCH: I don't have it in court but I will be happy to bring it with me tomorrow.

jqe 10 Samuels - cross

THE COURT: I hope this won't last too long, this case.

Q I would like to ask you a few questions about this alleged request of Mr. Donnelly's to keep the name Thomasville out of all your writings.

When was the first time Mr. Donnelly made that request?

A Since the second time I was there.

Q What was the date?

A The third time I was in Lancaster. The last time I went to Lancaster.

Q And the date was?

A The early part of September.

THE COURT: '66?

THE WITNESS: Yes, sir.

Q Where were you when Mr. Donnelly made that request? Whereabouts in Lancaster were you?

A He was showing me around the showrooms, the various products that they made.

THE COURT: In short where was it?

THE WITNESS: In Lancaster, one of his complex, in the building complex.

Q Who was present?

A Just Mr. Donnelly and I.

Q Only?

A That's all.

Q What were the words that Mr. Donnelly used in making this request?

A I beg your pardon?

Q What were the words that Mr. Donnelly used in making this request?

A He said that in discussing the Thomasville deal just address everything to me and don't either talk to me or if you address anything don't mention the name Thomasville in any correspondence.

Q Did you ask him why?

A No, I didn't.

Q Did he tell you why?

A No, he didn't.

Q At any time?

A At no time.

Q He just said "Don't mention the name Thomasville in any correspondence?"

A Right.

THE COURT: Didn't you think that somewhat queer?

THE WITNESS: Yes, sir. That is why I put the postscript on the letter. I was beholding to Mr. Donnelly. He gave me the opportunity after being in the business for

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jqe 12 Samuels - cross

27 years and climing the straight walls on my own I felt this was a great opportunity and I didn't want to kill the opportunity. I wanted to go along with everything he wanted to do. That is how I wrote the letter about Banzhaf.

Q Did he make this request about any other company?

A No, sir.

Q As it turned out, you did come up with over 50 suggestions, didn't you?

A Something like that.

Q Including Kroehler which you visited?

A Yes, sir. And there was nothing in writing on Kroehler either.

Q How about Johnson Carpet?

A Yes, there was a letter. Mohasco there wasn't a letter.

THE COURT: Don't go on and on. Just answer the question.

Q Your testimony is that Mr. Donnelly never told you why he made that request?

A That is right. He said "company politics."

Q When did he say that?

A At various times.

Q What times? When was the first time?

A When I showed my incredulity about him saying

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jqe 13 Samuels - cross

that to me he said that it's company policy.

Q When did he say it the first time, that's my question?

A I can't give you the date. He said it at various times--

THE COURT: You said that a couple of times. If you can't say when the first time was just say "I don't know."

Q How many times did he say that to you?

A Once I think. He doesn't have to repeat it more than once to me.

THE COURT: Don't argue with your lawyer.

THE WITNESS: He is not my lawyer.

THE COURT: Don't argue with this lawyer. I didn't mean to say he was your lawyer. It is all more pertinent when it is the adversary's lawyer. He has a right as you know, as a lawyer, to cross examine you and instruct you now and I think you ought to recognize the necessity of not arguing with this lawyer.

THE WITNESS: Yes, sir.

Q You understand that you were advising Armstrong and not just Mr. Donnelly regarding acquisitions, isn't that correct?

A Mr. Donnely was a representative of Armstrong. I

considered him Armstrong.

Q You considered him Mr. Armstrong?

A That is right, as far as I was concerned.

Q You did tell us this morning that you understood that Mr. Banzhaf was the chairman of this furniture acquisition committee, didn't you?

A Yes, but the acquisition committee in a corporation does not mean to say that they are the boss.

Q You understood Mr. Banzhaf was the chairman, didn't you?

A Yes.

Q And were you trying to keep something from him?

A No, sir.

THE COURT: You weren't?

THE WITNESS: From Mr. Banzhaf?

THE COURT: Yes.

THE WITNESS: I wasn't deliberately trying to keep anything from him.

THE COURT: You were, no matter who told you what to do, you were, weren't you?

THE WITNESS: Mr. Donnelly was the superior of Mr. Banzhaf.

THE COURT: You again evade answering directly.

THE WITNESS: If I give you a yes and no explana-

jqe 15 Samuels - cross [130]

tion, it is no answer.

THE COURT: I disagree with you. Will you please answer the question asked of you and not argue with him. I said that several times. If this goes on any more I may have to resort to something else.

Q You said Mr. Donnely is Mr. Banzhaf's superior. What was Mr. Donnely's title?

A He was the treasurer and I think he was the chief financial officer.

Q Was his title chief financial officer or treasurer?

A Both treasurer and chief financial officer.

Q How about Mr. Banzhaf, what did you understand his title to be?

A He was a vice president.

Q You knew him to be the staff vice president?

A I don't remember what category he was but he was a vice president and from what Mr. Donnelly told me, he was the one who is going to do the talking to me, the negotiating with me.

Q When you wrote that draft contract you made reference to your talks with Binns and Warnock who you knew to be the top men in the company, didn't you?

A That is right.

Q And you understood you were supposed to advise

Armstrong?

A That is right.

Q Going back to your testimony today about that meeting with Finch at the Chicago Mart in January, I think you said January 10--

THE COURT: '67.

Q Yes, of '67, I would like to read to you a question and an answer you gave on February 2, 1971 in your sworn deposition on page 127.

"Question. After you wrote the January 5, 1967 letter what was the next communication with anyone connected with Armstrong or Thomasville?

"A I returned from Chicago. I called Fred Donnelly and told him that I looked for Mr. Finch.

"Q Excuse me, Mr. Samuels, I said anyone connected with Armstrong or Thomasville.

"A I talked to Fred Donnelly of Armstrong that I had looked for Mr. Finch and could not find him."

Do you recall that question or those questions and those answers?

A Yes, I do.

gwsg 1 Samuels-cross

Q Truthful, sir?

A In view of the -- my refreshing of my recollection with the testimony of Mr. Finch and with the memorandum to Judge Goldberg, it is not truthful, no.

Q This refreshing of your recollection you say is something that your lawyer told you?

A No, I just forgot about it.

Q Didn't your lawyer tell you something that refreshed your recollection?

A He showed me -- he told me about the testimony of Mr. Finch and he showed me the memorandum that I wrote to Judge Goldberg. That's how I refreshed my recollection.

Q Then going on, the next page:

"Q Did he tell you, in fact, look for Mr. Finch?

"A Yes, I did. I made several calls to their place of business and he wasn't available."

Do you remember that question and that answer?

A The same answer, yes.

Q You mean the same answer, that it was truthful?

A That I gave before.

Q Was it truthful when you said it?

A No, it wasn't.

THE COURT: What connection does Ex Justice Goldberg have with you in this matter?

THE WITNESS: I was going -- I wanted to retain him, Judge, as my lawyer in this case.

THE COURT: Was that before you retained anybody?

THE WITNESS: Yes, that was before I spoke to Mr. Gould's office.

THE COURT: But you never did retain him?

THE WITNESS: I wanted him to handle it personally. He said that he would be busy travelling all over the world and he would not be able to do it, but someone in his office was going to do it.

As long as he wasn't going to handle it, I decided--

THE COURT: You didn't want anybody else but Goldberg; is that right?

THE WITNESS: That's right.

THE COURT: All right.

MR. PENNOYER: No further questions, your Honor.

THE COURT: Any redirect, counsellor?

MR. LESCH: Yes, your Honor.

May we have this marked for identification.

(Plaintiff's Exhibit 18 marked for identification.)

REDIRECT EXAMINATION

BY MR. LESCH:

Q Mr. Samuels, what is Exhibit 18 for identification?

A This is a letter that I wrote to Judge Arthur J. Goldberg of Paul, Weiss, Goldberg, Rifkind & Garrison on March 18, 1969.

THE COURT: All right. Don't tell us what it was.

Q Did you send the statement that is attached to that letter?

A Yes.

Q At the same time as the letter?

A Yes, sir.

Q Is this a copy that was kept by you in the ordinary course of business?

A Yes.

Q Is it in the ordinary course of business for you to keep copies of those letters?

A Yes.

MR. LESCH: I offer Exhibit 18 in evidence.

(Pause.)

MR. PENNOYER: Objection, your Honor, self-serving.

THE COURT: I beg your pardon?

MR. PENNOYER: Objection on the ground it is self-serving.

MR. LESCH: I offer it as a prior consistent statement.

THE COURT: I will look at it.

gwsg 4 Samuels-redirect [135]

MR. LESCH: I direct the Court's attention to page 3, I believe, the middle of the page, the statement where he refers to a meeting on January 10, 1967 with Mr. Finch.

(Pause.)

THE COURT: Will you underline, Mr. Lesch, or put parenthesis around the parts that you say or the witness said led to his refreshing his recollection after the deposition. It's a long statement. Let him do it. It might be better.

Q Mr. Samuels, I show you page 3 of the statement, portion of Exhibit 18 for identification.

A Yes, sir.

Q I ask you: Would you read the portion of that page which refreshed your recollection --

THE COURT: Which you say refreshed your recollection.

Q -- which you say refreshed your recollection that you had a meeting with Mr. Finch in Chicago on January 10, 1967.

A "After that I was told by Fred Donnelly that he telephoned him and set up an appointment" --

THE COURT: Look, will you please mark it with parenthesis around the portion you say answers your own

lawyer's question.

(Witness complies.)

THE COURT: May I see it?

MR. LESCH: Yes, your Honor.

THE COURT: You say all of this area within the parenthesis is necessary or did a part of it refresh your recollection?

THE WITNESS: All of it did, Judge.

THE COURT: Look at it, counsellor, and see if you would agree to admit the part that is within the parenthesis. Of course, this other statement is self-serving and I would be inclined to keep it out.

If this is down to earth on the matter, maybe it should go in. Would you object to that much?

MR. PENNOYER: No, sir, no objection to that much.

THE COURT: All right. The portion, Mr. Lesch, which is in parenthesis is admitted together with the letter, if there's no objection to the letter itself. There's nothing there that refreshes his recollection. It's just the date on which this statement was sent. All right.

MR. PENNOYER: Yes, sir.

THE COURT: Will you later get a copy made of the part within the parenthesis. Attach it to the letter

gwsg 6 Samuels-redirect [137]

and let it be remarked or at least indicate that it has been changed as required.

MR. LESCH: Yes, your Honor. I will do that, your Honor.

THE COURT: All right.

BY MR. LESCH:

Q Mr. Samuels, do you recall being questioned in this matter on February 2, 1971 at a deposition?

A Yes.

Q Do you recall at that time, Mr. Samuels, whether or not you testified with respect tothe facts that Mr. --

THE COURT: Can't you refer to the area about which he has already been asked? I think it's already in the record, isn't it, Mr. Pennoyer?

MR. PENNOYER: I'm not sure what he is pursuing your Honor.

THE COURT: I am retrospectively asking if you didn't use the transcript of the deposition to question the witness and then he later at least attempted to explain his change; isn't that so?

MR. PENNOYER: I did.

THE COURT: In other words, isn't it all before us already?

gwsg 7 Samuels-redirect, RECROSS [138]

MR. PENNOYER: It is, your Honor.

THE COURT: I think so.

Q Do you recall testifying earlier this afternoon that you were not certain how many times Mr. Donnelly told you not to put anything in writing with respect to Thomasville?

A Two or three times, I think it was.

Q Do you recall that you also so testified at the deposition on February 2, 1971?

A I think so, yes.

MR. LESCH: I have nothing further.

THE COURT: Any recross?

MR. PENNOYER: Yes, your Honor, a few things.

THE COURT: All right.

RECROSS EXAMINATION

BY MR. PENNOYER:

Q Mr. Samuels, referring to Plaintiff's Exhibit 18, that portion which you put into parenthesis.

Would you tell us whether there is anything said in that portion in parenthesis about having made an appointment with Mr. Finch for the January market?

A Can I read it?

THE COURT: Look at it.

A There's nothing said in there.

Agwsg 8 Samuels-recross [139]

THE COURT: Is that all?

MR. PENNOYER: Just one minute, your Honor.

(Pause.)

MR. PENNOYER: I will just read from page 144 of Mr. Samuels' deposition of February 2, 1971.

THE COURT: Let me find it.

MR. PENNOYER: Starting with line 2. This is in response to the last question of the redirect.

Q "Q From January 11, 1967 through the end of March 1967 did you have any telephone conversations with anyone else connected with Armstrong with respect to Thomasville Furniture Industries, Inc.?

"A No."

THE COURT: Who was indicated by "anyone else"? Anyone else beside whom?

MR. PENNOYER: I think the previous page, 143, refers to conversations with Donnelly.

THE COURT: Is that agreed?

MR. LESCH: No, I don't agree to that.

The previous question is, "Other than what you have testified to."

Then it goes on. The question and answer on page 144 are meaningless.

MR. PENNOYER: I will withdraw that, your Honor.

THE COURT: Is that all, Mr. Pennoyer?

MR. PENNOYER: That is all, sir.

THE COURT: I think you are through now.

(Witness excused.)

THE COURT: Do you have some other witnesses, perhaps, about the inventory?

MR. LESCH: Yes, your Honor. I reoffer Exhibits 4, 4A, 5, 6, 7, 8 and 9 at this time.

THE COURT: Let me see those.

Are you still objecting now?

MR. PENNOYER: No, no objection, your Honor.

THE COURT: Then these exhibits starting with 4 and running through 9 are admitted, correct? No objection to those?

MR. PENNOYER: No, sir.

(Plaintiff's Exhibits 4 through 9 for identification received in evidence.)

THE COURT: What else, Mr. Lesch?

MR. LESCH: I would like the Court's permission to read portions of various transcripts.

THE COURT: Deposition?

MR. LESCH: Deposition transcripts.

THE COURT: All right.

Where do we turn first?

gwsg 10 [141]

MR. LESCH: First we turn to the transcript of Mr. Donnelly's deposition. I understand we only have one copy.

THE COURT: All right.

MR. LESCH: Page 51, line 17.

THE COURT: Mr. Pennoyer, will you object properly if the question coming in is objectionable. You'd better give the lines as you go along, Mr. Lesch. That will help.

MR. LESCH: Yes. Starting at page 51, line 17. This is Mr. Donnelly testifying:

"Q Shortly after that meeting in January 1967, did you receive any information that Mr. Samuels had been in touch with Mr. Finch?

"A Yes, I did."

THE COURT: Excuse me. Is Donnelly here?

MR. PENNOYER: No, your Honor. I should introduce the gentleman in the back. We have Mr. Finch and Mr. Banzhaf here, but not Mr. Donnelly.

THE COURT: All right. I suppose it's admissible as a deposition to be read.

Go ahead.

MR. LESCH: Yes, your Honor.

"Q Whatwas the information you received and

gwsg 11 "Donnelly [142]

from whom?

"A As I recall, I received information from Mr. Banzhaf. I don't remember the exact date, but sometime in the following week, as I remember, that Mr. Samuels had talked briefly with Mr. Finch in Chicago.

"Q Did Mr. Banzhaf indicate how he had learned that?

"A I believe he learned that from Mr. Warnock.

"Q What else did Mr. Banzhaf say?

"A He passed on to me Mr. Warnock's very strong directive to do everything I could to make certain that Mr. Samuels did not involve himself with Mr. Finch or with the Thomasville matter.

"Q What did you say?

"A I was in agreement with that.

"Q Did you do anything about it?

"A I talked with Mr. Samuels and asked him not to involve himself with Mr. Finch or Thomasville.

"Q When did you talk to Mr. Samuels about that?

"A I don't recall the date.

"Q Was it personally or by telephone.

"A It was by telephone.

"Q What specifically did you say to him?

"A I don't remember the words, but the sense of

gwsg 12 "Donnelly [143]

what I said to him was, as I indicated, I asked him not to involve himself with the Thomasville matter.

"Q Did you tell him why not?

"A I don't remember specifically what I told him. I think it likely that I told him that we did not feel and never did feel that he had a role to play as far as Thomasville was concerned.

"Q Do you have any specific recollection of telling him that?

"A I have a specific recollection of discussing the matter with him and asking him not to involve himself with Thomasville.

"Q But do you not have a specific recollection of giving him the reasons for your requests?

"A I don't specifically recall giving him the reasons, no.

"Q Did you ever advise him in writing not to become involved with Thomasville.

"A I never felt it was necessary."

MR. LESCH: Next I was going to read from the Banzhaf transcript at page 13, line 4.

(Pause.)

take 4

jqe Gamuels - cross [144]

"Question. Did you have any discussions with Mr. Finch concerning the possibility of Armstrong acquiring Thomasville or Thomasville being mergedinto Armstrong?

"Answer. In a certain sense, yes, in that Mr. Covington had told me in setting up this appointment orally as a condition of setting up the appointment, that there were many people that came to the High Point area as I believe his words were, flying under false banners and that he did not want me at any rate to be guilty of that same sin, I assured him that I would not."

MR. PENNOYER: May I ask that the previous questions be read to put the thing in chronological context; in other words, when this statement by Mr. Covington happened.

THE COURT: Yes.

MR. LESCH: All right.

Starting at page 12 "What was the next time you had any contact with Thomasville?

"Answer. Early in 1966, January, I think just a few months later."

Do you want me to read the rest of page 12?

MR. PENNOYER: Please.

MR. LESCH: "Question. What happened then?

"Answer. At that time we went to Thomasville with an appointment arranged by, as I recall, Mr. Covington

jqe 2 145

of the High Point Chamber of Commerce where I had an opportunity to meet with Mr. Finch and to talk with him at some great length including visiting his showrooms and I believe we went through part of the factory at that time.

"Question. Who is we?

"Answer. We consisted of Miltford, who was our vice president in charge of manufacturing services and James Hazeltine, who was at that time assistant director of research.

"Question. Did you meet with Mr. Finch?

"Answer. I sure did.

"Question. How long?

"Answer. Several hours as I recall.

"Question. What did you discuss with Mr. Finch?

"Answer. A variety of things concerning the industry, its trends, the way in which it was going and the possible opportunities for us in the industry.

"Question. Did you have any discussion with Mr. Finch concerning the possibility of Armstrong acquiring Thomasville or Thomasville being merged into Armstrong?

"Answer. In a certain sense, yes, in that Mr. Covington had told me in setting up this appointment orally as a condition of setting up the appointment that there were many people that came to the High Point area, as I

jqe 3 [146]

believe his words were, flying under false banners and that he did not want me at any rate to be guilty of that same sin. I assured him that I would not. So have I initially when I first met Mr. Finch I told him that I did not want to be coming to him under false pretenses, that I wanted him to know that we were very interested in the furniture industry, that the range of our interest at the moment was very wide, that we might be talking to him even as an competitor some day or as a supplier to him or as a partner and I didn't want him to feel that if there was something he didn't want to discuss with me under those circumstances, you know, I wanted him to be sure he knew the banner I was flying under at that time.

"So there should have been no question in his mind that the possibility of acquisition or discussing acquisition was something that we definitely would have in mind some time.

"Question. Apparently there was a question in his mind because he did not so testify but"--then there is an objection and motion to strike.

"Question. Was that the only discussion you had which in your interpretation had to do with the possibility of acquisition or merger?

"Answer. With him?

jqe 4 [147]

"Question. Yes.

"Answer. The only one at that time--the only one at that time?

"Question. At that time, January 1966.

"Answer. Overtly,, yes.

"Question. What does 'overtly' mean?

"Answer. Well let's put it this way, when you meet a girl and you shake hands you may have something in mind but you don't state your proposition right off the bat unless you want your face slapped."

THE COURT: That is covertly.

MR. LESCH: "Question. In other words your testimony is that you may have had it in mind but you did not communicate it?

"Answer. Exactly.

"Question. To Mr. Finch.

"Answer. That is right other than what I said to him.

"Question. Did you communicate it to anyone else in writing, what you had in mind?

"Answer. At that time?

"Question. Yes.

"Answer. I don't think so but I don't recall.

"Question. Did you dictate any final memorandum

jqe 5 [148]

or any memorandum to other Armstrong executives saying that I have in mind the possibility of an acquisition or merger with Thomasville but I am not going to tell Mr. Finch point blank that this is what I have in mind?

"Answer. At that time?

"Question. Yes.

"Answer. I don't recall."

Now from page 36 of Mr. Banzhaf's transcript, starting at line 3.

"Question. But I take it up to the end of September 1966 when you visited Kroehler except for the conversation you had with Mr. Finch in January 1966 as to which you have already testified you had no discussion with Thomasville about the possibility of acquisition or merger, is that correct?

"Answer. We had not, that is correct."

Now, from Mr. Finch's deposition, the transcript. This deposition was held on November 22, 1971 in Lancaster, Pennsylvania. At page 4.

"Question. What is your present position, Mr. Finch?

"Answer. President, Thomasville Furniture Industries, Inc. and senior vice president of Armstrong Cork Company.

jqe 6 (149)

"Question. And is Thomasville Furniture Industries a Division of Armstrong Cork?

"Answer. A subsidiary of Armstrong.

"Question. A wholly-owned subsidiary?

"Answer. Wholly-owned subsidiary.

"Question. How long have you held your present positions, Mr. Finch?

"Answer. President of Thomasville Furniture Industries since July 1, 1961, senior vice president of Armstrong since November 1968.

"Question. Doyou know the plaintiff Harry Samuels?

"Answer. I have met Mr. Samuels.

"Question. When did you meet him for the first time?

"Answer. I believe I met him for the first time at a Brandeis University Dinner in Chicago, in January of 1965.

"Question. Did anyone introduce you to Mr. Samuels at that dinner?

"Answer. I don't recall who introduced us.

"Question. Do you know a Mr. Futurian?

"Answer. Yes.

"Question. Who is Mr. Futurian?

"Answer. Mr. Futurian was the president of

jqe 7 [150]

Futurian Manufacturing Company and is now connected with Mohasco.

"Question. And how long have you known Mr. Futurian?

"Answer. Oh, 15, 20 years.

"Question. Is this a social acquaintance or a business acquaintance or both?

"Answer. More social than business.

"Question. Have you had any business dealings with Mr. Futurian?

"Answer. No, sir.

"Question. Do you recall whether it was Mr. Futurian who introduced you to Mr. Samuels?

"Answer. I don't recall, it could have been.

"Question. Was this a dinner given in your honor in Chicago?

"Answer. Yes.

"Question. And was Mr. Samuels one of the guests at that dinner?

"Answer. Yes, I believe he was.

"Question. Did you have a conversation with Mr. Samuels at the time?

"Answer. No, I think I just spoke with him.

"Question. And what did you say and what did he

jqe 8 [151]

say?

"Answer. I don't recall."

Further on page 6 near the bottom of the page--

"Question. Did you ever meet Mr. Samuels again?

"Answer. I met Mr. Samuels again when he called on me in our space in January 1967.

"Question. And where was that?

"Answer. In Chicago.

"Question. Was that at the furniture show in Chicago?

"Answer. American Furniture Mart.

"Question. Did anyone introduce you to Mr. Samuels at that point?

"Answer. No.

"Question. How did the meeting come about?

"Answer. He came to our space and asked for me and we talked.

"Question. And what did you talk about?

"Answer. He indicated that he was representing Armstrong Cork Company and that we were interested in acquiring a furniture manufacturer--and that they were interested in a cquiring a furniture manufacturer.

"Question. Is that all he said at that point?

"Answer. No, he asked if Thomasville was interested.

jqe 9 [152]

I had just a few days before that been to Lancaster and met with all the top management of Armstrong. I thought it very unusual that Mr. Samuels' name had never been mentioned to me by anyone from Armstrong. Therefore, I told him that we were not interested in pursuing that matter but instead asked him what compnies he might know of that would be of interest to Thomasville for acquisition and he named certain types of industries saying he had a lot of contacts and could bring to Thomasville something that we might be interested in acquiring because I felt itwas very strange that no one had ever mentioned to me Mr. Samuels' name in connection with during my visits or previous contacts with Armstrong."

Now at page 8.

"Question. After you spoke with Mr. Samuels did you report to anyone at Armstrong?

"Answer. Yes, I did.

"Question. To whom?

"Answer. I spoke with Mr. Warnock.

"Question. When was that?

"Answer. I don't recall the exact date.

"Question. Was it shortly after.

"Answer. Shortly thereafter.

"Question. Can you fix the date of that meeting in Chicago?

jqe 10 [153]

"Answer. Not the exact date, no.

"Question. It was in January 1967, I take it?

"Answer. Yes, it was.

"Question. Was it early January?

"Answer. Yes, early January.

"Question. Would around the 9th or 10th sound right?

"Answer. It could be about that period, I don't recall the exact date.

"Question. Did you speak to Mr. Warnock personally about this meeting?

"Answer. Yes, I did.

"Question. Where?

"Answer. By telephone.

"Question. And what did you tell him?

"Answer. I told him that a Mr. Samuels had spoken to me and indicated that he was working on behalf of Armstrong and that I didn't know who he was and I was very much on my guard because they had never identified him. Mr. Warnock told me that he was not representing Armstrong and that I should not concern myself with the matter.

"Question. And was that the end of your conversation about Mr. Samuels?

"Answer. Yes.

jqe 11 [154]

"Question. Did you discuss your meetings with Mr. Samuels with anyone else?

"Answer. No, sir.

"Question. Specifically, did you speak to Mr. Donnelly about it?

"Answer. No.

"Question. or to Mr. Banzhaf?

"Answer. No.

"Question. Did you make a memorandum or any note concernig your meeting with Mr. Samuels?

"Answer. No.

"Question. Did you write any letters about it?

"Answer. No.

"Question. So that your conversation with Mr. Warnock was the only conversation you had with anyone concerning your meeting with Mr. Samuels?

"Answer. As I recall at that time, yes.

"Question. Did you subsequently have any further conversations regarding that meeting?

"Answer. I don't recall any.

"Question. Did you meet Mr. Samuels again after that January 1967 meeting?

"Answer. I recall meeting Mr. Samuels when I was visiting the American at Martinsville showroom. I

jqe 12 [155]

don't recall the date exactly.

"Question. Was that in Chicago?

"Answer. Yes, he was visiting that firm.

"Question. Was it at the time of the furniture show?

"Answer. Yes.

"Question. Could that have been around June of 1967?

"Answer. It could have been, I don't recall.

"Question. How did that meeting come about?

"Answer. Well, I was visiting with my friends and competitors, namely the principals of American Module and Mr. Samuels happened to be in the showroom.

"Question. Who was the person you were seeing at that time?

"Answer. Mr. R. M. Simmons and/or Mr. R. M. Simmons, Jr., and/or Mr. Tom Bartley.

"Question. And did Mr. Samuels walk up to you at that time?

"Answer. He spoke to me.

"Question. Did he also speak to Mr. Simmons, either Mr. Simmons or Mr. Bartley?

"Answer. I don't recall, I think he already was in the showroom when I walked in.

"Question. I see. And did you have a conversa-

jqe 13 [156]

tion with Mr. Samuels?

"Answer. Just a passing conversation greeting each other.

"Question. Did he ask you about your negotiations with Armstrong?

"Answer. I don't recall if he did.

"Question. Do you recall whether Armstrong was mentioned at all?

"Answer. I don't recall whether it was mentioned at all."

Further down on page 11.

"Question. When was the first time you met with any Armstrong official or employees?

"Answer. In January of 1966 when Armstrong called on Thomasville Furniture Industries, the meeting being arranged by the High Point Chamber of Commerce.

"Question. And what was the purpose of that meeting?

"Answer. The Armstrong group came to Thomasville to explore the possibility of becoming a supplier to the furniture industry and also with the purpose of stating that they were possibly interested in entering the furniture industry. They were introduced to us by the Chamber of Commerce of High Point and asked if we would be willing to show them

jqe 14 (157)

our product line and discuss with them any materials that they might supply to us.

"Question. Who was in the Armstrong group?

"Answer. Mr. Banzhaf, Mr. Hazeltine and Mr. Ford.

"Question. And how long did the meeting take place?

"Answer. Well, their visit lasted about two or three hours.

"Question. And did Armstrong at that point become a supplier to Thomasville?

"Answer. No, there were no materials that they were manufacturing at that point that we needed or used.

"Question. What had they been thinking of supplying to you?

"Objection."

"Question. Well, perhaps this was badly phrased. Did they indicate to you what products they wanted to supply to you?

"Answer. No.

"Question. Did you indicate to them what products you would be interested in?

"Answer. No.

"Question. With whom did you carry on your main discussion?

jqe 15 [158]

"Answer. With all three gentlemen.

"Question. Simultaneously?

"Answer. Yes.

"Question. And you thought they had indicated they might be interested in entering the furniture industry, what did they say in that regard?

"Answer. Just simply that they might be interested in entering the furniture industry. They didn't indicate how.

"Question. Was there any discussion during this meeting about a possible merger between Thomasville and Armstrong?

"Answer. No.

"Question. Or the acquisition of Thomasville by Armstrong?

"Answer. No.

"Question. When was the first time that you had a discussion with anyone at Armstrong concerning the possibility of a merger acquisition?

"Answer. The second meeting with them.

"Question. When was that?

"Answer. That was October of 1966."

THE COURT: '66?

MR. LESCH: Yes, '66.

jqe 16 [159]

Finally, page 19.

"Question. Now prior to your meeting on October 18, 1966, with the Armstrong people, do you recall receiving any telephone calls from Mr. Harry Samuels?

"Answer. I don't recall receiving any but I found a note in my file indicating that Mr. Samuels had called.

"Question. Do you have the original of that note?

"MR. PENNOYER: I have a telephone slip dated 10/10/66, the original of which I am handing you."

May we have this marked for identification.

(Plaintiff's Exhibit 19 marked for identification.)

MR. LESCH: Mr. Schurtman, who was conducting the deposition, said "May I have that marked as Plaintiff's Exhibit 1 for identification", and it was marked.

THE COURT: Any objections?

MR. PENNOYER: No, your Honor, it can go in.

THE COURT: Mark it here then.

(Plaintiff's Exhibit 19 marked for identification and received in evidence.)

MR. LESCH: "Question. Mr. Finch, I show you Plaintiff's Exhibit 1 "and I add parenthentically that that is Plaintiff's Exhibit 19 in evidence in this case "for identification.

"

jqe 17 [160]

"Is that the message to which you just referred?

"Answer. Yes.

"Question. Can you identify the handwriting on that message?

"Answer. Yes.

"Question. Whose is it?

"Answer. Part of it is from our switchboard, part of it is my secretary's.

"Question. I take it that the first five lines are your switchboard?

"Answer. Yes.

"Question. And the message in red ink which says called again 3:15 p.m. is your secretary's?

"Answer. Yes.

"Question. And the message at the bottom "will call again during market for appointment," is that your secretary's?

"Answer. Yes.

"Question. What is your secretary's name?

"Answer. Mrs. Robert L. Yarbrough.

"Question. Will you spell that for the reporter.

"Answer. Y-a-r-b-r-o-u-g-h.

"Question. Is she still your secretary?

"Answer. Yes.

jqe 18 [161]

"Question. Do you recall speaking to Mr. Samuels that day?

"Answer. I don't recall speaking to him.

"Question. Do you recall speaking to him between October 10 and October 18?

"Answer. I do not."

Your Honor, I am now finished reading the transcript and I see the next witness has entered the room.

May I have a five-minute recess?

THE COURT: Yes.

(Recess.)

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gwsg 1 [162]

THE COURT: All right, what's next?

MR. LESCH: Mr. Nathanson.

Z F L I G R. N A T H A N S O N, being called by the plaintiff, after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LESCH:

Q Mr. Nathanson, what is your occupation?

A I have two occupations.

One, I am an attorney.

The second one, as a 50 per cent stockholder of Nathanson Associates, Inc. We work on mergers, acquisitions, private placements, obtaining loans.

THE COURT: You let your voice fall. I can't hear you even here, and I am sure Mr. Pennoyer back there couldn't hear you. You are an attorney. You ought to know when you come into court that you have to speak up.

Now, having become a little impatient, perhaps, will you please answer the question all over again.

Q Tell us what your occupations are.

A My occupation is dual: I'm an attorney --

THE COURT: What is the other occupation?

THE WITNESS: I am a broker or finder.

THE COURT: I suspected that. Go ahead.

gwsg 2 Nathanson-direct [163]

A (Continuing) In the second capacity I operate as an officer and a 50 per cent stockholder of Nathanson Associates, Inc.

Q What do you do as a broker or a finder?

A As a broker or finder I endeavor to find -- in the case of people who want to acquire, I endeavor to find companies that will sell to them, and in the case of the companies that come to me that want to sell, I find or try to find for them buyers. I also render other functions in connection therewith.

If the companies want to go public, I find underwriters for them. If they need monies, I obtain private placements from insurance companies. If they need bank money, I try to get bank money for them, or as a finder or as a broker.

Q In how many deals have you acted as a broker or finder?

THE COURT: How long have you been engaged?

THE WITNESS: I have been engaged in this approximately 10 years, and I would say that I have received fees in over 20 transactions.

Q In the absense of an agreement as to the fee, what is the customary fee that is paid to a broker or finder.

gwsg 3 Nathanson-Direct [164]

MR. PENNOYER: Objection, your Honor.

THE COURT: Sustained. There's a set fee here, isn't there?

MR. PENNOYER: Yes, sir.

MR. LESCH: There's an action for quantum meruit.

THE COURT: Which is the quantum meruit --

MR. LESCH: The second and fourth causes of action, your Honor, I believe.

THE COURT: Does it apply to Babbitt?

MR. LESCH: It applies to both Babbitt --

THE COURT: What does it have to do with Babbitt?

MR. LESCH: -- and Thomasville.

THE COURT: What does it have to do with Babbitt? Isn't it conceded it was three per cent, Mr. Pennoyer?

MR. PENNOYER: Three per cent was paid to Mr. Samuels under the contract.

THE COURT: Do you concede that it might apply to quantum meruit on Thomasville?

MR. PENNOYER: We do not, sir. The contract precludes it. If Thomasville is covered by this contract, which we say it is not, but, if it is, this contract precludes a quantum meruit.

THE COURT: Do you agree with that, Mr. Lesch? Does the contract preclude quantum meruit?

MR. LESCH: If this Court finds that this contract was valid and in effect, then there is no quantum meruit claim.

On the other hand --

THE COURT: You apparently claim an alternative quantum meruit.

MR. LESCH: That's right.

THE COURT: I will take it. I don't know that it makes any difference, but I may have to determine whether or not it is at all applicable. If it is not applicable, I shall not apply it.

All right. Answer the question. Do you know what the question is?

THE WITNESS: Yes, I recall the question.

THE COURT: Answer it.

A The normal or standard brokerage or finders fees in a case of an acquisition, which is a purchase or a sale, customarily is five, four, three, two, one; five per cent attached to the first million dollars, four per cent for the second million, three per cent for the third million, two per cent for the fourth million and from thereon in one per cent.

Q When you say million, you are referring to the purchas price?

A Yes, sir.

MR. PENNOYER: Move to strike the answer, your Honor.

THE COURT: Why?

MR. PENNOYER: It's not responsive to the question of what he is paid for his time. I think that was the question.

MR. LESCH: That wasn't the question.

THE COURT: Denied.

What is it based upon?

THE WITNESS: It's based upon the purchase price, the value of the purchase price.

THE COURT: The purchase price or the value --

THE WITNESS: If the purchase price is in cash, then it's the purchase price in dollars. If the purchase price is in stock, it generally is the value of the stock at the time of the closing of the transaction.

THE COURT: The value of it is how determined?

THE WITNESS: How determined?

THE COURT: Yes.

THE WITNESS: To the extent that the stock --

THE COURT: Suppose it's on the market?

THE WITNESS: If the stock is marketable --

THE COURT: Suppose it's on the stock exchange?

THE WITNESS: If it's on the New York Stock Exchange or the American, it generally is valued for the purposes of our agreements at the market.

THE COURT: Does it have to be agreed upon as to the basis under the contract? Does that make a difference?

THE WITNESS: If the contract has an agreement, it controls.

THE COURT: If it doesn't have?

THE WITNESS: If it doesn't have an agreement, or the agreement does not specify the value, it just specifies the value of what is acquired, then you would have the problem of valuation. If it were restricted stock, it would be valued below the market.

THE COURT: I understand.

THE WITNESS: If it were free stock, it would be valued at the market.

THE COURT: All right.

Go on.

Q Have you been recognized as a finder solely for suggesting available partners and offering to set up meetings?

MR. PENNOYER: Objection.

THE COURT: Read the question.

gwsg 7 Nathanson-direct [168]

(Question read.)

MR. PENNOYER: My objection, your Honor --

THE COURT: Sustained. I don't think that's applicable here.

Q In your experience as a finder, have finders been recognized solely for suggesting available partners and offering to set up meetings among the principals?

MR. PENNOYER: Objection.

THE COURT: Sustained.

MR. LESCH: I have nothing further.

MR. PENNOYER: May I have just one minute, your Honor.

(Pause.)

MR. PENNOYER: No questions, your Honor.

THE COURT: You are excused.

(Witness excused.)

THE COURT: Next witness.

MR. LESCH: Your Honor, there was a memorandum that was referred to on the deposition of Mr. Finch which contained a statement of Mr. Finch's recollection of his meetings with Mr. Samuels.

I would like to ask that the Court direct defendant's counsel to produce that memorandum.

THE COURT: Was it utilized at the deposition?

gwsg 8 [169]

MR. LESCH: Reference was made to it at the deposition. At the deposition we requested that it be produced, and it was not produced at that time.

THE COURT: Do you have it here now, Mr. Pennoyer?

MR. PENNOYER: I do, your Honor.

THE COURT: Let it be marked for identification.

MR. PENNOYER: I will hand it to the clerk.

xxx (Plaintiff's Exhibit 20 marked for identification.)

MR. PENNOYER: Shall I state --

THE COURT: Are you going to offer it? Wait until it is offered.

MR. PENNOYER: I am not going to give it to him, your Honor.

THE COURT: You are not going to give it to him?

MR. PENNOYER: This is a privileged document prepared by Mr. Finch.

THE COURT: I didn't know that.

MR. PENNOYER: This was for Armstrong counsel after the claim letter was sent by Mr. Samuels.

THE COURT: Sustained.

MR. PENNOYER: I am perfectly agreeable to your Honor looking at it.

MR. LESCH: May I inquire through the Court whether this was prepared before or after the merger with

gwsg 9 [170]

Thomasville was consummated?

THE COURT: What difference does that make?

MR. LESCH: If it was prepared before the merger with Thomasville was consummated, then Mr. Finch was not preparing this letter for his own attorney, he was preparing a statement of what transpired, in which case I submit that the work product privilege would not apply.

MR. PENNOYER: I will put the facts in the record. As I understand it, the merger agreement was announced on July 2, 1968. The merger was consummated on November 1, 1968. These memoranda were written on July 17, 1968. So that at that time there had been --

THE COURT: Was there a demand for payment of so-called finder's fee prior to the time when this paper was prepared?

MR. PENNOYER: Yes. Mr. Samuels had written Armstrong the letter which is now Plaintiff's claim letter.

THE COURT: Tell me which letter it is and get the date, please.

MR. LESCH: 16.

THE COURT: What is the number?

MR. PENNOYER: Number 16, plaintiff's Exhibit 16.

THE COURT: This is dated July 5, 1968.

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gwsg 10

What is the date of this paper?

MR. PENNOYER: July 17.

THE COURT: Objection sustained. I feel I must.

MR. LESCH: Would your Honor hear me on that for a moment?

THE COURT: Yes, I will hear you.

Who prepared this paper?

MR. PENNOYER: Mr. Finch.

THE COURT: Did he give it to you?

MR. PENNOYER: At the request of Armstrong house counsel. This is before I was in the case, your Honor.

THE COURT: After request by counsel for Armstrong to Finch; is that right?

MR. PENNOYER: That is correct, your Honor.

THE COURT: I suppose counsel says it wasn't exactly prepared by the attorneys.

Did you have anything to do with this?

MR. PENNOYER: No, I did not. It was prepared for Armstrong counsel.

THE COURT: Is that enough? Is that enough to bring it under the protective coverage?

MR. PENNOYER: That is our position, your Honor.

gwsg 11 [172]

It is.

THE COURT: What do you say to that?

MR. LESCH: I say it isn't, your Honor.

THE COURT: I am going to reserve.

I will ask you to submit something tomorrow morning at 10 o'clock, each side.

MR. LESCH: May we just have it established if it be the fact, your Honor, that no attorney participated in working on this document?

THE COURT: I don't know about that. He may have told him what to do, told Finch what to do.

MR. LESCH: May I ask that Mr. Finch take the stand on this narrow issue? He is in the court.

THE COURT: If there is no objection. There may be an objection to the question of going into the format of the paper, so forth. I don't know.

I will await questions.

T H O M A S A . F I N C H , J R.,

being called by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LESCH:

Q Mr. Finch, were you the president of Thomasville

Furniture Industries, --

THE COURT: Wait a minute. I am not certain that this procedure is correct.

MR. LESCH: I am just calling him as a plaintiff's witness, your Honor.

THE COURT: You are calling him in an attempt to get this into the record, right?

MR. LESCH: Yes.

THE COURT: Isn't the defense of the privileged character a matter for defense to elicit?

MR. LESCH: I would just with the Court's permission propose to ask some questions with respect to that document. If they have any objections, you will have to rule on it.

THE COURT: Go ahead.

If you object, Mr. Pennoyer, please say so.

Q Were you the president of Thomasville Furniture Industries, Inc. before it was merged into Armstrong Cork Company.

A Yes.

Q Do you know when that merger became effective?

A The merger agreementwas reached on July 2.

Q Do you know when the merger became effective?

A Became effective November 1, 1968.

Q Before the merger became effective, were you requested to prepare a statement setting forth all of your conversations with Harry Samuels?

A I was requested to, yes.

Q Is that exhibit, and let the record note that Mr. Pennoyer is handing Mr. Finch a copy of Plaintiff's Exhibit 20 for identification -- is that the document which you prepared?

A Yes.

Q When did you prepare it?

A I prepared it as dated here, July 17, 1968.

Q Did anyone assist you in the preparation of that document or did you prepare it by yourself?

A I prepared it by myself.

THE COURT: Were you asked by counsel for Armstrong to prepare that paper?

THE WITNESS: Yes, I was, sir.

THE COURT: Were you instructed as to how you were to prepare it?

THE WITNESS: No. I was told to make a chronological digest of all the events that took place between Thomasville and Armstrong leading up to the agreement to merge.

THE COURT: Read that question and answer.

(Record read.)

THE COURT: What did you do with the paper after you prepared it?

THE WITNESS: I sent it to the legal counsel.

THE COURT: For Armstrong?

THE WITNESS: For Armstrong.

THE COURT: Who were they?

THE WITNESS: I sent it to the internal house counsel.

THE COURT: Who was he?

THE WITNESS: Mr. Schaeffer, Albert Schaeffer.

THE COURT: Where is his office?

THE WITNESS: In Lancaster, Pennsylvania, the main office of the company.

THE COURT: All right.

Any further questions, Mr. Lesch?

MR. LESCH: No, I have no further questions.

THE COURT: Mr. Pennoyer?

MR. PENNOYER: No questions, your Honor.

THE COURT: Do you still object?

MR. PENNOYER: I am thinking, your Honor.

May I have one minute?

THE COURT: You can think about it if you want. If not, I will reserve decision.

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MR. PENNOYER: We will have no objection to it going into evidence, your Honor.

MR. LESCH: I am not offering it in evidence. I would like to see it first, your Honor, and then I will decide on whether I want to offer it.

MR. PENNOYER: Very well. You may see it.

THE COURT: You are permitting him to see it even if he doesn't offer it in evidence?

MR. PENNOYER: If he doesn't offer it, I am going to offer it.

THE COURT: I don't think that you can get it in. You'd better review your decision to let him see it because I don't know if there's any reason why it should be admitted if you offer it.

Quite the contrary.

MR. PENNOYER: In that event, your Honor, I will adhere to my privileged position.

THE COURT: All right, you will object.

Decision reserved.

You are excused.

(Witness excused.)

3/ MR. LESCH: Your Honor, we have one additional expert witness.

THE COURT: One other expert?

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gwsg 16

MR. LESCH: Yes.

THE COURT: What is he expert on?

MR. LESCH: He will testify to substantially the same thing.

THE COURT: The same as the previous witness?

MR. LESCH: Yes.

I would like at this time, your Honor, to reoffer Exhibit 15.

THE COURT: What is that?

MR. LESCH: First I would like to reoffer Exhibit 10.

THE COURT: Let's see it, please.

This is from Samuels dated July 18, 1966 directed to Smith, vice president of First National City Bank.

What do you say now, Mr. Pennoyer? Have you had any change of heart or mind?

MR. PENNOYER: This is Plaintiff's Exhibit 10?

THE COURT: Yes.

MR. PENNOYER: May I see it a minute?

THE COURT: Yes. I don't know how it is relevant.

MR. PENNOYER: I would still adhere to my objection, your Honor.

THE COURT: Sustained.

MR. LESCH: I also would at this time like to

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gwsg 17

reoffer 15 for identification.

THE COURT: Let me see it.

This is all about Thomas Pride Mills?

MR. LESCH: Yes. The reason I am offering that, your Honor, is because the contract provided that if they desire to exclude a particular company from the fee which Mr. Samuels was entitled to receive, they would write him a letter. That shows that they were aware of the practice and, indeed, followed it.

MR. PENNOYER: We would object on two grounds, your Honor. One, in particular, that Thomas Pride, the letter from us, was preceded by a written suggestion from Mr. Samuels.

There is no evidence in this record of Mr. Samuels ever having submitted in writing to Thomasville--

THE COURT: Sustained.

MR. LESCH: Your Honor, with the exception of that one expert witness, and I am just checking through my experts to make sure I haven't left anything out, we will be finished with the plaintiff's case.

THE COURT: Well, take a little time to check your papers.

(Pause.)

jqe [179]

MR. LESCH: May I have your Honor's permission to rest my case subject to putting on one additional expert witness tomorrow?

THE COURT: I don't know how it effects the defendant.

MR. PENNOYER: We had planned to proceed tomorrow morning--

THE COURT: Have you any witnesses here for today?

MR. PENNOYER: I have Mr. Finch and Mr. Banzhaf but I would prefer--we could start with Mr. Finch.

THE COURT: Would it inconvenience you if you have to go ahead now and this other witness is produced tomorrow? I don't think there is any real inconvenience. You have the right to recall your witness after the prospective so-called expert--

MR. PENNOYER: Should I make my motions now with respect to the plaintiff's case or should I wait until tomorrow?

THE COURT: I guess you might as well until tomorrow although you may put it on the record now.

Let me ask you two questions.

One, you raise the defense that the complaint does not state a cause of action. Do you still want to press that?

jqe [180]

MR. PENNOYER: Yes, sir, with respect--

THE COURT: You do press that?

MR. PENNOYER: Yes.

THE COURT: How about the defense of the statute of frauds?

MR. PENNOYER: We do not.

THE COURT: It is stipulated that the defense of the statute of frauds is withdrawn, I think that is fully in accord with the cases, isn't it? I think Mr. Gould's office knows about that.

The other defenses remain. I assume the denials and the insufficiency of the performance, I suppose, remains. The details of the performance, that is.

Do you want to add anything else to your motion now?

MR. PENNOYER: This would be our motion to dismiss at the end of the plaintiff's case.

We so move, your Honor, on the following grounds:

That the plaintiff's case contends that Thomasville was governed by the contract of August 25, 1966 and under that contract we submit that the evidence in the plaintiff's case shows that nothing was done which would warrant any fee.

Specifically insofar as it is claimed that Mr. Samuels found Thomasville, the plaintiff in his own case

jqe [181]

has put in evidence from our depositions--that is the deposition of Mr. Finch--Armstrong people met with him in January of 1966 which was six months before we ever met Armstrong.

THE COURT: In other words, what you say is that the plaintiff knew about this possibility. You say they knew about Thomasville?

MR. PENNOYER: We say the defendant knew about Thomasville and indeed it visited Thomasville. I am going strictly by what is in the plaintiff's case at this point in time.

With respect to the contract that provides for fee in the event of negotiation by Samuels, we submit that there is no evidence whatsoever of negotiation. The only evidence of anything Samuels did is that he says he spoke to Mr. Finch in Chicago in January and said how about Armstrong, aren't you interested and Mr. Finch says, Samuels, going by his own testimony, said no. I don't know what service and I submit no service has been shown in the plaintiff's case to warrant any recovery whatsoever under this contract.

THE COURT: What in your judgment is the effect of this letter of January 10, 1967?

MR. PENNOYER: That is the termination letter and we submit as to that that it says specifically as to any

jqe [132]

future services they are to be provided for by specific contracts in specific instances.

THE COURT: One of your motions, I take it, is that after the notice of termination there were no services performed to bring about the closing, the so-called consummation which your client Mr. Lesch knew about finally.

MR. PENNOYER: And there was no contract thereafter so we had the right to terminate on 30-days notice.

THE COURT: I am going to reserve decision and take the testimony and then decide it after trial, gentlemen.

You may put your first witness on now. We will go until about 4:15.

This, of course, is done with reservation to Mr. Lesch to put on the expert he mentioned, not by name but by reference.

You are still under oath, Mr. Finch.

xx T H O M A S A. F I N C H, J R., resumed.

xx DIRECT EXAMINATION

BY MR. PENNOYER:

Q Mr. Finch, what is your occupation as of today?

A I am president of Thomasville Furniture Industries Inc. and Senior Vice President of Armstrong Cork Company.

jqe Finch - direct [183]

Q I believe you already testified that as of 1966 you were president of Thomasville Furniture Industries?

A Yes.

Q Were you a stockholder of that company?

A Yes.

Q When was your first meeting with Thomasville or rather Armstrong personnel?

A January 21, 1966.

Q Where did that meeting take place?

A Thomasville.

Q Who came from Armstrong?

A Mr. Banzhaf, Mr. Hazeltine and Mr. Ford.

Q On the Thomasville side who was present?

A Mr. Lynch. and myself.

THE COURT: What was his position?

THE WITNESS: Executive Vice President of Thomasville.

THE COURT: And this Thomasville is in North Carolina, I believe?

THE WITNESS: Yes.

Q What were the conversations at that meeting?

MR. LESCH: I object.

Q Did you have any conversations at that meeting?

A Yes.

jqe Finch - direct [184]

Q What were they?

MR. LESCH: I object.

THE COURT: Why?

MR. LESCH: Hearsay.

THE COURT: No. Conversations between Thomasville and Armstrong?

MR. LESCH: Yes.

THE COURT: Overruled.

MR. LESCH: Outside of the presence of Mr. Samuels.

THE COURT: That does not make any difference.

A We discussed if there were any materials that Armstrong made or might make that would be used by the furniture industry.

THE COURT: Is that all? Substantially is that all?

THE WITNESS: No.

THE COURT: What else?

THE WITNESS: Mr. Banzhaf mentioned that Armstrong was considering entering the furniture business. We showed them our product line. We discussed some of the materials we were using in the product line.

Q Is that the substance of the conversation at that meeting?

A Yes.

jqe Finch - direct [185]

Q Roughly how long did that meeting take?

A Probably two to three hours.

Q Was anything said about any future meetings or any future action on the part of either your company or Armstrong?

A That they were to continue to look at and be in touch with us and some of our people with regard towhat they might be of use in in serving the industry.

THE COURT: That is products?

THE WITNESS: Yes, products.

Q What was your next meeting with Armstrong?

A My next meeting with Armstrong was in October of 1966 in Winston-Salem at the Wachovia Bank and Trust Company.

Q Who was present on the Thomasville side at that meeting?

A I was the only one present.

Q Who was present for Armstrong?

A Mr. Banzhaf, Mr. Donnelly and Mr. Ellis.

THE COURT: Who was Ellis?

THE WITNESS: The controller of Armstrong.

Q How did arrangements for this meeting come to your attention?

A Mr. Watlington, the President of Wachovia called

me and asked if I would come over before the Wachovia Board of Directors met and see and visit with people from Armstrong who were going to be with the bank on that particular day.

MR. LESCH: I object and move to strike.

THE COURT: Question and answer read.)

THE COURT: Is that all?

MR. PENNOYER: That is all.

THE COURT: You see, Mr. Lesch, you did not object to the question. The question called for how did it come about. He tells you how it came about. Now you want to object to the question and strike the answer.

MR. LESCH: Yes, I do, your Honor.

THE COURT: I don't see why it should be done. It is immaterial anyway, isn't it? What difference does it make?

MR. PENNOYER: I think it is Watlington.

THE WITNESS: Yes, Watlington.

THE COURT: There isn't anything material in it.

Q Mr. Watlington was who?

A President of the Wachovia Bank and Trust Company.

Q Was he a director of Thomasville?

A Yes.

Q And you were a director of Wachovia Bank?

A Yes.

Q As well as of Thomasville?

A Yes.

Q I believe you stated that the meeting with Armstrong took place before the Wachovia Board meeting?

A Yes.

Q On October 18, 19--

MR. LESCH: I object, he didn't state that.

THE COURT: It is immaterial, sustained.

Q Did it take place before the Wachovia Board meeting on October 18, 1966?

A Yes.

Q What was the conversation between you and the gentleman from Armstrong on that occasion?

MR. LESCH: Objection.

THE COURT: Overruled.

A The conversation was that Armstrong was interested in talking with Thomasville about a merger or an acquisition of Thomasville.

MR. LESCH: May we have who said what, your Honor.

THE COURT: Yes.

THE WITNESS: Mr. Banzhaf speaking for the three men present said that Armstrong was interested in talking with Thomasville about an acquisition or a merger. He invited

jqe Finch - direct [138]

us to come to Lancaster so we might see their facilities and capabilities so that they might show us how a combination of the two companies would be to the advantage of both.

Q Was anything said at that meeting by Mr. Banzhaf about the advantages to either Armstrong or Thomasville of an affiliation?

A Yes, he described them.

Q What?

A The technological and engineering capabilities that they could bring to a company such as Thomasville, the marketing expertise and market research, the advertising combination that could be made between the two companies' products and the collective advantages of all these.

Q What was your response to Mr. Banzhaf's suggestion?

A I told him that we had never been available or considered ourselves to be available for acquisition, that we would think about it and that we would let him know later as to whether we would be interested in coming and discussing the matter, coming to Lancaster to discuss the matter with him.

Q And did you subsequently inform him of your interest in going to Lancaster?

A Yes, we decided, that is--

THE COURT: Don't say we decided.

jqe Finch - direct [189]

THE WITNESS: The management of Thomasville, my associates and myself decided that we certainly should take a look at the situation.

THE COURT: Did you tell that to the proposed company with which you might be connected? Did you tell it to the officers?

THE WITNESS: We didn't tell Armstrong that. We told them we would come and accept their invitation.

THE COURT: That is all you said to them?

THE WITNESS: That is right. We didn't even accept it on the 18th. I told them we would talk about it. Later on we would let them know and we did.

Q Did there come a time when you went to Lancaster to visit the Armstrong people?

A Yes.

Q When was that?

A January 4, 5 and 6 of 1967 Mr. Doherty, Mr. Jennings and myself went to Lancaster. Mr. Doherty was treasurer of Thomasville. Mr. Jennings was vice president of manufacturing.

THE COURT: You visited the Armstrong factory in Lancaster?

THE WITNESS: Yes, sir.

Q I believe you testified that you spent three days

at the Armstrong plant?

A Approximately.

Q Do you recall now the visits made by you to various people on that occasion?

A Yes.

Q Who did you see on that occasion? That is, from Armstrong.

A I doubt I can name them all but I saw Mr. Warnock, the president. Mr. Binns, the senior vice president. Mr. Painter, the executive vice president. Mr. Banzhaf, Mr. Donnelly, Mr. Ellis, Mr. Hazeltine, Mr. Ford, Mr. Jenson, Mr. J. V. Jones and a number of other people.

Q Were these people all seen at once or at various times over the three-day period?

A At various times over the three-day period.

Q Could you tell us in substance what was your schedule during the three-day period, who did you see and what did you see at the plant?

THE COURT: Generally only.

THE WITNESS: Generally, we visited their technical center where the research and development staff and facilities are, the engineering department. We also visited with people in advertising, the market research group and I think that was generally the group.

Q Was anything said about possible merger or affiliation in the course of those three days?

A Yes.

Q With whom did you have that conversation?

A On the last day at luncheon with Mr. Warnock, Mr. Binns, Mr. Banzhaf, Mr. Donnelly and Mr. Painter. We really got down to talking about the advantages, as they saw them, for an acquisition and merger for both companies and actually they were telling me how the things--

MR. LESCH: I object to this and I move to strike his testimony.

THE COURT: Denied as to the motion to strike except the latter part telling how and so forth.

Q What did they tell you?

MR. LESCH: I object to that.

THE COURT: Overruled. What did they say?

THE WITNESS: They told me how the things that we had seen would be of collective advantage to both companies and how they would be put together or could be put together to try to make, as you say in the terms of mergers, two and two make five instead of four.

Q What was your response to their suggestion on that occasion?

A I told them that it was a very interesting dis-

cussion that we had had with them, that we would go back and think about it and that we would let them know about our decision as to whether to pursue the matter further at a later date.

Q From the meeting with Armstrong in Lancaster on the 4th, 5th and 6th of January where did you go next?

A I went immediately to Chicago to the Furniture Mart which was open the following Sunday.

Q While you were there did you speak with Mr. Samuels at any time?

A Yes, I did.

Q Where was he when you spoke to him?

A He came to our showroom in the American Furniture Mart early during the week that the Mart started and walked in and asked to see me and spoke with me at that time.

THE COURT: That was about the 17th?

THE WITNESS: I would think, sir, it would be closer to the 9th or 10th of January of '67.

Q What did he say to you and what did you say to him on that occasion?

A He told me that he knew of a company in Pennsylvania that was interesting in acquiring a furniture company and he either identified it or he made it evident as to who it was, namely Armstrong, and that they were very much

interested in acquiring Thomasville or talking to Thomasville about an acquisition.

Q What did you say?

A I told him that we were not interested in being acquired at that particular time, that we were more interested in acquiring companies as we had been doing.

He identified himself as being able to bring companies to Thomasville and he mentioned the fact that he had a lamp company at that particular time that he could bring to us. I told him we were not interested in a lamp company but if he found anything that might be of interest to us he could feel free to get in touch with us.

I was busy with customers and I wanted to move on.

MR. LESCH: I move to strike that.

THE COURT: Strike it.

Q As a result of that meeting with Mr. Samuels, did you make any calls to Armstrong plant?

A Yes, I did.

Q Who did you call?

A Mr. Warnock.

Q When?

A Very shortly after that. I forgot the exact date.

Q Why did you call?

jqe Finch - direct [194]

A I called him because--

MR. LESCH: Objection.

THE COURT: Sustained. You may ask what transpired.

Q You put in a call to Mr. Warnock?

A Yes.

Q In Lancaster?

A Yes.

Q What did you say to him and what did he say to you?

A I told him that Mr. Samuels had come to see me, indicating that he represented Armstrong, that I had just been there a few days before that and no one at all had ever mentioned Mr. Samuels to me while I was in Lancaster and I was concerned about the fact that he seemed to infer he knew that I had been to Lancaster.

Q What did he say?

A He said that Mr. Samuels has nothing to do with our talks with you whatsoever. He plays no part in what we are discussing.

Q Anything else?

A That the negotiations between Thomasville and Armstrong would be direct without a third party being involved.

Q Subsequent to the call to Mr. Warnock did you have any meetings with Armstrong people?

A After that?

Q Yes, after that.

A My next meeting with Armstrong people was a meeting with Mr. Warnock and Mr. Binns in Philadelphia in April, April 27 of 1967.

Q Where did that meeting take place?

A At the Barclay Hotel.

Q On your side who was present?

A I was the only one present from Thomasville.

Q What was the conversation at that meeting?

MR. LESCH: Same objection, your Honor.

THE COURT: This is with Warnock?

MR. PENNOYER: Yes.

THE COURT: Overruled.

A We again discussed--

THE COURT: Can you state what each one said?

THE WITNESS: Mr. Warnock discussed with me the advantages again of being a part of Armstrong. Mr. Binns did the same thing. We discussed the various aspects of the combination of the two companies, what it could mean to them, the technological advantages, merchandising and marketing advantages and explored them more thoroughly than

we had had an opportunity to do.

THE COURT: What did you say in substance?

THE WITNESS: That we were still considering the matter, that we had not yet decided whether we would be available for an acquisition or not. I told him the first decision Thomasville wanted to make was did we want to be acquired by anyone. The second decision was what kind of an organization would come out of a merger of the two companies and what would be our position in it.

The third and last thing would be the financial transaction, but that would be the last thing we would discuss.

THE COURT: That was not discussed at that time, details as to that?

THE WITNESS: No, sir.

THE COURT: It is now about 4:15. I think we will adjourn now. You may step down.

I want to be certain that I have the facts clear about the proposed exhibit, the statement. May I first have the statement. I don't have it.

Then I would like the letter from Mr. Samuels in which he demanded a commission or fee. Then will you refresh my recollection as to when the merger was completed.

MR. LESCH: November 1, 1968.

jqe

THE COURT: November 1?

MR. PENNOYER: That is correct. The merger agreement was announced on July 2, 1968.

THE COURT: Announced July 2?

MR. PENNOYER: Right.

THE COURT: But it was consummated as far as the papers--

MR. PENNOYER: It still needed approval of stockholders.

THE COURT: It had to be approved by the stockholders of both corporations?

MR. PENNOYER: That is right, sir.

THE COURT: In other words, the announcement was a mere statement of contemplation?

MR. PENNOYER: Yes.

MR. LESCH: The merger agreement itself was signed, according to Exhibit 1, on July 2, 1968.

THE COURT: That was of course as you stated, subject to approval by the stockholders.

MR. LESCH: Yes.

THE COURT: Do I need any other facts about this? Was there a date submitted as to when Mr. Finch conferred with a lawyer?

MR. PENNOYER: I do have a document--

jqe

MR. LESCH: I believe he testified it was July 17.

MR. PENNOYER: By which Mr. Finch forwards this statement to Mr. Schaffer.

THE COURT: When did he consult the lawyer before the 17th?

MR. PENNOYER: I don't think he testified.

THE COURT: May I ask him from here?

MR. PENNOYER: Yes.

THE COURT: Mr. Finch, I want to ask you for this on the record.

I have before me this statement that you prepared you say dated July 17.

Did you see the lawyer for your company before that time?

THE WITNESS: No, sir.

THE COURT: Did you talk with him on the telephone?

THE WITNESS: I was asked by him to prepare a statement.

THE COURT: When did he ask you that?

THE WITNESS: I forgot the exact date. Sometime between the 5th of July and the 17th of July.

THE COURT: All right. That is enough, I think.

Are there any other facts that either of you say I should have in mind?

MR. LESCH: I think Mr. Finch testified that that was prepared by him alone without the participation of any lawyer.

THE COURT: But after the request from counsel.

MR. LESCH: Yes.

THE COURT: All right.

10 o'clock tomorrow morning and I will ask, as I did before, counsel to bring me a short memorandum about the admissibility of this statement under the rules.

(Trial adjourned to October 10, 1973 at 10 a.m.)

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HARRY S. SAMUELS

-vs- 69 Civ. 3022

ARMSTRONG CORK COMPANY

New York, New York
October 10, 1973 - 10 a.m.

(Robing room conference.)

THE COURT: Is there a change on this situation, this exhibit?

MR. PENNOYER: Yes, your Honor, I informed your law clerk.

THE COURT: Do you want to let counsel see it, is that correct?

MR. PENNOYER: We are willing to do that.

THE COURT: That solves that question then. You don't object to him seeing it now?

MR. PENNOYER: No.

THE COURT: I hand the exhibit to Mr. Lesch. Off the record.

(Discussion off the record.)

(In open court.)

THE COURT: As I recall it, we were on direct examination of Mr. Finch.

Is there any desire to interrupt that,

Mr. Lesch, and call your witness?

MR. LESCH: Your Honor, I understand that Mr. Berman was here this morning, my witness was. As I explained to your Honor off the record I was unable to attend the court session this morning because of the delay on all the New Haven Railway trains and Mr. Berman was unable to come immediately but I think he will be here at about 3:30. If it would be convenient --

THE COURT: Well, Mr. Pennoyer, you can go on with the direct examination of Mr. Finch.

MR. PENNOYER: I would like to continue that, your Honor. We have four officers of the company who have been here all day.

THE COURT: You want to interrupt Finch?

MR. PENNOYER: I want to continue with Finch.

THE COURT: All right.

MR. LESCH: Would Mr. Pennoyer prefer that we not call Mr. Berman today?

MR. PENNOYER: I would.

MR. LESCH: With your Honor's permission we will call Mr. Berman later on in the trial.

THE COURT: I don't know about that. I want to finish this trial today. I don't know why I can't

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FOLEY SQUARE, NEW YORK, N.Y. 10007

jqsq 2a [203a]

unless there is a lot of defense testimony.

MR. PENNOYER: We have one witness, Mr. Binns, who isn't arriving until tonight. I didn't think he would be able to make it on the stand by today.

THE COURT: What are you going to do after Mr. Finch?

MR. PENNOYER: Mr. Banzhaf, then Mr. Donnelly and Mr. Warnock.

THE COURT: Let's see how far you go.

(continued on page 204.)

jqsg 3 [204]

case today and we may have to wait until tomorrow.

Go on with your direct examination.

THOMAS A. FINCH, JR., resumed.

DIRECT EXAMINATION (CONTINUED)

BY MR. PENNOYER:

Q Mr. Finch, I believe we were talking at the end of the day yesterday about a meeting you had with Mr. Warnock and Mr. Binns at the Barkley Hotel in Philadelphia in April of '67. Do you recall that?

A Yes, sir.

Q I would like to back up a minute and ask the clerk to mark these seven pages.

(Defendant's Exhibit E marked for identification.)

xxx

Q Mr. Finch, I show you Defendant's Exhibit E for identification and ask you what it is.

A This is the agenda for the visit that Mr. Dorety, Mr. Jennings and I made to Lancaster to visit Armstrong on January 4, 5 and 6 of 1967.

THE COURT: Was that made in advance or afterwards?

THE WITNESS: In advance.

Q Was a copy of that given to you at the time of your visit to Lancaster?

A Yes.

MR. PENNOYER: I offer it in evidence.

MR. LESCH: Objection.

THE COURT: I will have to sustain it.

What was planned and what was done ordinarily is not the same.

Was any copy of this given to Mr. Samuels?

MR. PENNOYER: No, he wasn't there, your Honor.

THE COURT: Have you seen this, counsellor.

MR. LESCH: Yes, I have seen it.

THE COURT: I must confess, I don't see anything pertinent about it. I shall have to sustain the objection.

MR. PENNOYER: May I ask one further question?

THE COURT: Yes.

Q Mr. Finch, was the itinerary set forth in Defendant's Exhibit E for identification substantially followed at the time of your visit to Lancaster?

MR. LESCH: I object to the form of the question.

THE COURT: Sustained.

Q Was it followed?

MR. LESCH: Objection.

THE COURT: Sustained.

MR. PENNOYER: Would you please mark this single page document.

jqsg 5 Finch-direct [206]

(Defendant's Exhibit F marked for identification.)

Q I show you Defendant's F for identification and ask you what it is, Mr. Finch?

A It's a letter I wrote to Mr. Warnock after the Lancaster visit in January of 1967 thanking him for the courtesies that he showed us.

Q And dated what?

A Dated January 19, 1967.

MR. PENNOYER: I offer that in evidence.

MR. LESCH: Objection.

THE COURT: Relevancy?

MR. LESCH: Both on the grounds of relevancy and on the grounds that it's hearsay and on the grounds there is no proper foundation.

THE COURT: Your ground as to hearsay is not sound if the facts relate to activities of Armstrong with Thomasville.

There is some degree of Delphagorical in the second paragraph but I am going to take it and overrule the objection.

(Defendant's Exhibit F received in evidence.)

Q Mr. Finch, following your January meeting --

THE COURT: What year?

MR. PENNOYER: 1967. At Lancaster with the

jqsg 6 Finch-direct [207]

Armstrong people, I believe you already testified that your next meeting with them was at the Barkley Hotel in Philadelphia, is that correct?

THE WITNESS: Yes.

Q In April of 1967?

A Yes.

Q Prior to that meeting and specifically in March of 1967 did you have a phone conversation with Mr. Samuels?

A I don't recall any conversation with him nor have I any records of one.

Q I would like to read from the testimony yesterday on page 68.

THE COURT: Direct testimony of Samuels.

MR. LESCH: I object to the reading of the testimony on the grounds that the witness has not shown any need to have his recollection refreshed.

THE COURT: I don't think that is the purpose of it.

Is this to submit a question?

MR. PENNOYER: It is, sir.

THE COURT: Then you want to ask him about the matter in the question?

MR. PENNOYER: I do, sir.

THE COURT: I will allow it.

jqe 1 Finch - direct [208]

Q Starting at page 12 "What did you do, if anything--

THE COURT: Page 68, line 12. Go ahead.

Q "THE WITNESS: I telephoned Mr. Finch and finally got him on the telephone."

Skipping over to 69 or rather the bottom of 68, line 22, "North Carolina, right?

"THE WITNESS: Right. I had about eight or ten minutes of conversation with him. I asked him if he remembered me and he said, "Yes, I do. I remember you well. I said, 'Would you like to meet with a very fine firm again with respect to a merger.' He said, 'Who is it.' I said, 'Well, it is a company in Lancaster Pennsylvania in the flooring business. Do I have to tell you any further?'

"THE COURT: In what?

"THE WITNESS: In the flooring business. Armstrong is known for its Armstrong floors and ceiling.

"THE COURT: What did he say?

"THE WITNESS: He said 'Yes, I would.'"

Mr. Finch, did you have any such conversation with Mr. Samuels in March of 1967?

THE COURT: On the telephone?

MR. PENNOYER: On the telephone.

A I do not recall any such conversation.

Q Have you ever had any such conversation with him at any time?

A I do not ever recall any telephone conversations with Mr. Samuels.

Q Have you ever had a face to face conversation of that nature?

A No, not of that nature.

Q Have you ever told Mr. Samuels in substance that you would be pleased to meet with Armstrong?

A No.

MR. PENNOYER: Would you please mark this document.

(Defendant's Exhibit B marked for identification.)

Q I show you Defendant's G for identification and ask you what it is, please?

A It is a letter to Mr. Warnock dated April 28, 1967, acknowledging the courtesy shown me in the meeting the previous day--

MR. LESCH: I object to this.

THE COURT: Don't say what it states. It is a letter from whom to whom?

THE WITNESS: From me to Mr. Warnock, president of Armstrong Corporation.

jqe 3 Finch - direct (210)

THE COURT: All right.

MR. PENNOYER: I offer that in evidence.

MR. LESCH: I object.

THE COURT: How is this relevant?

MR. PENNOYER: It establishes proof of the meeting. The meeting took place and what was left open, your Honor.

THE COURT: Where does it say what was left open?

MR. PENNOYER: "I thoroughly enjoyed our frank and informal discussions and have already begun to think seriously about them. I will plan to call you Tuesday, May 9."

THE COURT: It doesn't say what the discussions were about.

MR. PENNOYER: He already testified to that, your Honor.

THE COURT: Who has?

MR. PENNOYER: The witness did yesterday.

THE COURT: I will take it.

(Defendant's Exhibit G received in evidence.)

xx

Q Following the April meeting at the Barclay Hotel what was your next meeting with Armstrong people?

A Mr. Warnock, Mr. Binns and Mr. Banzhaf came to Thomasville on August 24 and 25 of 1967 to visit Thomasville's

facilities and to meet the management of Thomasville.

Q Did they meet the management of Thomasville to that date?

A Yes, they did.

Q Briefly what was the substance?

THE COURT: Identify who was there, first.

Q I believe you already testified that Mr. Warnock, Mr. Binns and Mr. Ellis--

A Mr. Banzhaf.

Q They were there on the Armstrong side. Who was present at any discussions with them from Thomasville?

A Mr. Doherty and Mr. Jennings who had been with me to Lancaster on January 4, 5 and 6 of that year. They also met Mr. Thrower, vice president of Thomasville, head of one of its divisions, Mr. Pennington, the corporate secretary, Mr. Routum, the vice president of sales, Mr. Lynch, executive vice president and Mr. Watlington, one of the outside members of the Thomasville Board of Directors.

THE COURT: What date are you talking about?

MR. PENNOYER: I am talking about the two days which the witness has said the meeting consummed.

THE COURT: When was that?

THE WITNESS: August 24 and 25 of 1967.

THE COURT: You have been answering about some

jqe 4a Finch - direct [211a]

other meetings, haven't you?

THE WITNESS: No, your Honor.

end
1b

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gawe 1 Finch - direct [212]

Q Were you also present at the meetings with the Armstrong people?

A Yes.

Q What was the discussion briefly during that period?

MR. LESCH: I object.

Q Of meetings?

MR. LESCH: I object again.

THE COURT: Form?

MR. LESCH: Both as to form and on the ground of hearsay.

THE COURT: Objection as to form is sustained. All other objections are denied.

Q Did you have discussions with the Armstrong people at that time?

A Yes.

Q Did those discussions concern possibility of an affiliation with Armstrong?

A Yes.

MR. LESCH: Objection.

Q What were the discussions in that respect?

THE COURT: Overruled.

A The discussions were the advantages of the two companies being put together, again the same ones that we had been over previously, such as technical advantage,

gawe Finch - direct [213]

engineering advantage, marketing research, marketing strength, advertising.

THE COURT: Can you state, Mr. Finch, in general, what the officers of Thomasville said and what any officers from Armstrong said then?

THE WITNESS: Well, your Honor, the Thomasville group wanted to hear from--

THE COURT: They said what?

THE WITNESS: They said--they told them what they thought Thomasville strengths were and Thomasville's weaknesses were, and they wanted to hear from Armstrong how they could--these strengths and weaknesses could be put together.

THE COURT: What did any officer from Armstrong say?

THE WITNESS: Mr. Wornock and Mr. Binns and Mr. Banzhaf reiterated again the advantage of the two companies being put together.

THE COURT: Is that as far as the conversation went?

THE WITNESS: There was no decision made by either party at that time, but we agreed to consider the matter and to take it to the Thomasville Board and discuss it with them and then--

THE COURT: By "we"--

gawe Finch - direct [214]

A The Thomasville Management decided to take it to the other members of the Thomasville Board who were not present.

THE COURT: Did you tell that to these representatives of Armstrong at that time?

THE WITNESS: Yes, sir.

THE COURT: All right.

BY MR. PENNOYER:

Q What next occurred, if anything, with respect to the matter left open at that meeting?

A On the 10th of November I called Mr. Warnock. He was not in. So I talked with Mr. Binns. I told him after consulting with the other members of the Thomasville Board, Thomasville had decided that it did not wish to become affiliated with Armstrong or any other company at that time.

I thanked him for all the attention that they had shown us, but this concluded our negotiations as far as Thomasville was concerned.

Q That date was November--

A November 10th, 1967.

Q Subsequently did there occur any further conversations with Armstrong people?

A My next contact with anyone from Armstrong was

gawe Finch - direct (215)

in February. Mr. Banzhaf--

THE COURT: '68?

THE WITNESS: '68, sir.

A Mr. Banzhaf was in Winston-Salem. He asked me if I would have lunch with him so that he might discuss with me a list of ten furniture companies that he was interested in looking at for acquisition and if I would be willing to give him my personal evaluation of each of these companies, which I did.

Q What was the date of that meeting, sir?

A I don't recall the exact date. It was in mid-February of 1968.

Q Subsequent to that date did you have any further conversation with Armstrong representatives?

A Mr. Banzhaf at that meeting in February told me that he would be back on the week of March 4 to visit some of the companies we discussed.

I asked him to come and be our guest over the week-end so that we could play golf together.

I was interested in finding out what results he had on his talk to these other companies.

Q Did that meeting occur?

A Yes, it occurred on March the 8th, 9th and 10th, Friday, Saturday and Sunday of 1968.

gawe Finch - direct [216]

Q Subsequent to that meeting did you have any further meetings with any Armstrong representative and, if so, when?

A In early May I called Mr. Banzhaf--

THE COURT: This is '68?

THE WITNESS: '68.

A Inearly May of '68 I called Mr. Banzhaf and told him that in view of the changing nature of the business, that I would like to open again the discussions with Armstrong about an affiliation between the two companies.

I suggested that Mr. Binns and Mr. Banzhaf and their wives meet my wife and me at my home in Sea Island, Georgia where we could discuss the matter in private further. We met on May 6, 7 and 8 of 1968 at that place.

Q At that time was there any discussion regarding possible affiliation with Armstrong?

MR. LESCH: May I have a standing objection to all these conversations?

THE COURT: No, you may not. You will have to object specifically. I can't give you any omnibus objection.

MR. LESCH: I object to any of these conversations outside the presence of the plaintiff.

THE COUT: Overruled, generally.

gawe Finch - direct [217]

A We again discussed the changing nature of the business, as I saw it at that time, how it changed in the last six months. I told him that--I told Mr. Binns and Mr. Banzhaf that I wanted two of our--two of my associates, Mr. Wilson and Mr. Thrower, to visit Lancaster so they could see firsthand the facilities and capabilities in Lancaster and arrange for a visit of these two men as well as discussing again the general advantages of the combination of the companies and how they would be organized together.

THE COURT: This was all at Sea Island?

THE WITNESS: Yes, sir.

Q What was the date of that conversation?

A The meetings were--they arrived on the 6th of May and departed on the 8th of May of 1968.

Q Fine.

To your knowledge, did Mr. Thrower and Mr. Wilson go to Armstrong?

A They went to Armstrong on June 4 and 5 of 1968, fr for a visit.

Q Subsequent to that were there any further discussions regarding affiliation with Armstrong?

A I asked Mr. Banzhaf to meet Mr. Thrower and me in Chicago at the June Furniture Market and we met at the Drake Hotel on Monday, June 17.

gawe Finch - direct [219]

THE COURT: Where did you say you met?

THE WITNESS: Drake Hotel.

THE COURT: Where is that, Chicago?

THE WITNESS: Chicago.

Q At that time did you discuss with Mr. Banzhaf possible affiliation?

A Yes. We discussed further points that had come up, that had been raised by all of us in the management of Thomasville.

MR. LESCH: I object to the contents of any discussions. The question was simply whether he discussed it?

THE COURT: Yes, strike out everything except "yes."

You may inquire about who said what.

MR. PENNOYER: Yes.

Q Who said what?

What was the discussion at that meeting?

MR. LESCH: Same objection, your Honor.

THE COURT: Overruled. This goes, of course, to the defense's contention that there was nothing done by the plaintiff here which brought about this merger and it was done altogether, the claim is--I don't see that it is true necessarily--that it was done by the parties acting independently.

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That's why I'm admitting it.

Q Do you have the question?

A Repeat the question, please.

Q What was the discussion at that meeting in Chicago?

THE COURT: When that question is asked, it means that you must tell who said what substantially, not the exact words necessarily, if you don't remember them.

A I don't remember the exact words, but I asked specific questions regarding the financial transactions, the type of financial transactions that would occur between the parties if they got together, what some of the details would have to be, would have to be worked out next with it.

Mr. Banzhaf answered those questions to the satisfaction of Mr. Thrower and myself.

Q Following that were there any further meetings with Armstrong people regarding possible affiliation?

A The next meeting was on June 30 and July 1st.

Q Where?

A Again--

THE COURT: '68 is this?

THE WITNESS: Of 1968.

A Again, at Sea Island, Georgia, where Mr. Thrower, Mr. Doherty and myself met Mr. Warnock, Mr. Binns and Mr.

gawe Finch - direct [220]

Banzhaf and where we agreed on the matter of principal and intent to merge the two corporations.

Q Then what happened thereafter?

A On July 2 we flew to Winston-Salem, North Carolina to meet in the offices of Thomasville's attorneys, Womble, Carlyle, Sandridge and Rice.

Q What happened?

A We met in the office of our counsel where an agreement was prepared and signed by the parties, a letter of agreement or intent to merge the parties subject to the action of the Board of Directors of both companies and the shareholders of both companies.

THE COURT: Has that been admitted?

MR. PENNOYER: Your Honor, I believe that there has been admitted as a plaintiff's exhibit the announcement; isn't that correct?

MR. LESCH: Yes, your Honor. There is attached--

THE COURT: Show that to the witness and see if that is the one he is discussing.

MR. LESCH: We have the proxy statement and attached to it is an agreement.

THE COURT: I mean this written agreement which he says was signed. If it isn't in evidence, get it out.

Off the record.

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gawe Finch - direct [221]

(Discussion off the record.)

MR. PENNOYER: Will you please mark this as Defendant's Exhibit H.

xx (Defendant's Exhibit H marked for identification.)

Q I show you Defendant's Exhibit H for identification.

What is it, Mr. Finch?

A That is an announcement prepared by Armstrong Cork Company dated July 2, 1968 to be used internally in their company of the agreement in principal, which was reached between Thomasville and Armstrong.

Q Does it also quote a news release?

MR. LESCH: Objection.

THE COURT: Yes, sustained.

Get the original agreement, if you have it. If not, dig it out and submit it later.

MR. PENNOYER: We will do that later then, your Honor.

THE COURT: All right. You don't have to do it in person if you send it in with a stipulation.

Q Subsequent to that, Mr. Finch--

THE COURT: That is the only stipulation necessary if he has no objection other than this principal he has already indicated.

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All right.

MR. PENNOYER: I would ask for that stipulation now, that such document may be put in would you--

THE COURT: He may want to look at it, counsellor.

MR. PENNOYER: I mean assuming that you agree it is that document, we may put it in without a witness.

MR. LESCH: I don't think I'll have any problem with that.

THE COURT: If you don't agree, you can come up to my chambers about it.

All right.

Q Subsequent to that date--

THE COURT: You better put in what date.

Q The date of July 2, 1968, Mr. Finch, was the merger consummated?

A Yes.

Q When?

A November 1st, 1968.

THE COURT: Both Boards of Directors and both sets of stockholders agreed?

THE WITNESS: Having previously met and agreed.

THE COURT: All right.

A May I correct myself on one thing?

Q Yes, sir.

gawe Finch - direct [223]

A I'm not sure that the shareholders of Armstrong had to meet to do this, but the shareholders of Thomasville had to meet to do it.

THE COURT: You say that Thomasville shareholders agreed to the merger, is that so?

THE WITNESS: Yes, sir, at a special meeting of the shareholders.

THE COURT: Was Thomasville merged into Armstrong?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Thomasville became a subsidiary of Armstrong, is that correct?

A That's correct.

Q At any time during the course of those negotiations, Mr. Finch, did you make any request to the Armstrong people with respect to confidentiality?

A Yes, I did.

Q When was the first time?

A The first time that I met with them I stated--

MR. LESCH: I object to this also, your Honor.

THE COURT: What difference does that make? Why is it relevant?

MR. PENNOYER: It bears on the position of the plaintiff apparently that we owed the duty to Samuels to

tell him what was going on with--

THE COURT: How could you stipulate yourself out of a duty?

MR. PENNOYER: It is our position we didn't have such a duty.

THE COURT: I understand. Isn't that the best ground on which to rely? In other words, assuming that there is no obligation, there's no difficulty. If there is an obligation, I don't see how you can stipulate yourself out of it by saying it was an agreement with Thomasville that they be confidential. Do you?

MR. PENNOYER: I think it would bear on the question of the alleged bad faith on our part, your Honor.

THE COURT: You may offer it and I will consider whether it is admissible or not later.

Q When was the first time you requested--

THE COURT: I thought you were going to go into the confidentiality. I want it to be indicated on this record what is the part that is profferred. You don't understand?

MR. PENNOYER: I don't understand, your Honor.

THE COURT: If you want to proffer it, proffer it, but go right to it and don't go on with something else that is separate from it. That is my point.

gawe Finch - direct [225]

Q What did you say to Armstrong about confidentiality?

A If the matter--

THE COURT: No. Will you tell what arrangement, if any, there was, who said what about that.

MR. LESCH: May we have the time?

THE COURT: Fix the time and place where you say there was some arrangement.

THE WITNESS: The first time I met Mr. Warnock in January of 1967 I told him that it was extremely important that in the trade that there be no indication or any word out that Thomasville was even visiting Armstrong or even looking--that they were looking at Thomasville for the simple reason it would affect our marketing position--

MR. LESCH: I object, your Honor.

THE COURT: Never mind any reason that you gave. What did he say?

THE WITNESS: He said that he would respect that.

THE COURT: Is that the whole story about the arrangement about confidentiality?

THE WITNESS: Well, there was another reason.

THE COURT: I didn't say a reason, but any conference or conversation about it?

THE WITNESS: We repeated that on the other occasions that we met.

gawe Finch - direct [228]

THE COURT: Then this request for confidentiality came from Armstrong?

THE WITNESS: No, I made the request.

THE COURT: You made it on behalf of Thomasville?

THE WITNESS: Yes, to Mr. Warnock and his associates.

THE COURT: All right.

Armstrong officers you say agreed to that, is that so?

THE WITNESS: Yes, sir.

THE COURT: Did you make that as a condition to discussion of merger or takeover?

THE WITNESS: Not as a condition, no, sir.

THE COURT: All right, go ahead, counsellor.

This ends for the record purpose the tender of proof about confidentiality. Let the record show that.

As I said, I reserve and will determine that later, gentlemen.

d 2a

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gwsg 1 Finch-direct

b/1

Q Up until the time of your invitation to Mr. Banzhaf in 1968, Mr. Finch, to come down and discuss possible affiliation, had you ever told anybody that Thomasville was available for acquisition?

A Definitely not.

Q Was it available?

A No, it was not.

MR. PENNOYER: May I have just one moment, your Honor.

(Pause.)

Q When did Armstrong first propose a merger or affiliation?

THE COURT: To Thomasville.

MR. PENNOYER: To Thomasville.

A The first indication that they wished to discuss the possibility of merger or acquisition was in October of 1966.

Q Where?

A At the Wachovia Bank in Winston-Salem, North Carolina.

Q That proposal came from whom?

A From Mr. Banzhaf, Mr. Donnelly and Mr. Ellis.

MR. PENNOYER: I have no further questions at this time, your Honor.

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THE COURT: Cross.

CROSS EXAMINATION

BY MR. LESCH:

Q Mr. Finch, I show you Exhibit 19 in evidence. Do you know what that is?

A Yes.

Q What is that?

A It's a note from the switchboard and my secretary that Mr. Harry Samuels attempted to call me and talk with me on October the 10th, 1966.

Q Do you remember that independent of that exhibit 19?

A No.

Q Did you talk to Mr. Samuels when you received the message?

A No.

THE COURT: After he received it?

Q After you received the message?

A No.

Q Did Mr. Samuels try to reach you again after --

THE COURT: How does he know unless it came into the --

MR. LESCH: If he knows.

THE COURT: You better ask it the other way

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gsg 3 Finch-cross

around.

Q Do you know whether Mr. Samuels tried to reach you again after October 10th?

MR. PENNOYER: At any time? Objection.

THE COURT: Fix the time.

Q Between October 10 and December 31, 1966.

A Would you state the question again, please?

Q Between October 10 and December 31, 1966 do you know whether Mr. Samuels tried to reach you by telephone?

THE COURT: That would be, of course, only from your own knowledge unless some office help recorded the call and gave you the message.

A I have no recollection that he did and I have no records to the effect that he tried to reach me.

Q Did your secretary tell you on other occasions that Mr. Samuels had tried to reach you?

A I don't recall her telling me.

Q Did you know who Harry Samuels was when you received Exhibit 19?

A I did not remember him.

Q Did you discuss with anyone whether or not you should return that call?

A No, I did not.

Q Were you in the habit of not returning telephone

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calls that were made to you?

THE COURT: I don't know that that's --

MR. PENNOYER: Objection, your Honor.

THE COURT: Sustained. Sometimes it's done, sometimes it isn't done.

Q You just testified a few minutes ago, Mr. Finch, that prior to 1968 you had never let anyone know that Thomasville was available for acquisition; is that correct?

A That is correct.

Q Had you ever discussed the possibility of Thomasville being acquired prior to 1968?

THE COURT: With?

MR. LESCH: With anyone.

A No.

Q You had certainly discussed it in October 1966, hadn't you?

A I listened to what they had to say about the possibility of it, but I did not discuss the possibility of Thomasville being acquired.

THE COURT: By, "they," whom do you mean?

THE WITNESS: I mean Armstrong.

Q You listened to them, but you didn't say anything in response?

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gwsg 5 Finch-cross

A Well, I didn't say Thomasville was available.

Q But you just listened?

A I listened.

Q Had you listened to other offers or other proposals of a similar nature prior to October 19 --

THE COURT: I don't know how that is material, counsellor.

Q Hadn't bankers come to you with proposals on several occasions that Thomasville be acquired by various corporations?

THE COURT: Is that material?

MR. LESCH: I think it's material, your Honor, to show --

THE COURT: To show that bankers came, but that doesn't mean that it was entertained.

MR. LESCH: I may be able to develop that.

THECOURT: He may have had all sorts of inquiries, but that alone, that is a one-sided proposition, even with the bankers.

Q Did you know who the president of Mohasco was in 1966?

A I did not.

Q Mr. Shuttleworth?

A I did not.

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Q Did you have any conversations with anyone at Mohasco concerning Thomasville being acquired?

A I did not.

Q Did you know Mr. Futurian at that time?

A Yes, I knew Mr. Futurian.

Q Hadn't you discussed the possible acquisition of Thomasville by other companies with Mr. Futurian?

A Mr. Futurian asked me if we were interested in being a part of Mohasco, and I told him, no.

Q When did Mr. Futurian ask you that?

A I don't recall the exact date.

Q Was it in late 1965 or early 1966?

A I do not remember the time.

Q Was it at the time of the Brandise dinner?

A It could have been, but I don't recall.

Q In that conversation did you tell him that under no circumstances Thomasville would ever want to be acquired?

A I told him that Thomasville was not available.

Q For Futurian or for anyone?

A For Mohasco.

Q Did you tell him that it might be available to someone else --

A No.

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Q -- under other circumstances.

A No.

Q I show you Exhibit 13 and ask you whether you have ever seen this document before today?

A I have not seen it before.

Q This is the first time today that you have ever seen this document?

A Yes.

THE COURT: That's what it means.

You don't have to ask him a second time.

Q Did you know or were you told that Mr. Samuels was representing Armstrong prior to October 1966?

A No.

Q Did Mr. Banzhaf or Mr. Donnelly ever mention Mr. Samuels to you at all?

A No.

Q You did meet Samuels in January of 1967; is that correct?

A He said I did. I don't recall the exact -- exactly whether I met him or not. I presume I did. It was at a Brandise University dinner.

Q I am talking about 1967.

A '67?

Q Yes, sir.

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THE COURT: What is the question?

Reframe your question or state it again.

Q Did you meet Mr. Samuels in January 1967?

A I did.

Q When you met him at that time, did you recognize him?

A He introduced himself to me and told me that he had met me at the Brandise dinner.

Q Did you recall that at that occasion?

A I didn't recall it, but I didn't deny it to him, that we did meet. I met several hundred people that night.

Q You told Mr. Samuels at that time that Thomasville was not interested in being acquired; is that right?

A I told Mr. Samuels when he spoke with me about Armstrong that Thomasville was acquiring companies at that time and not interested in being acquired.

Q Did you tell Mr. Samuels that you had just met with the Armstrong people in Lancaster, Pennsylvania.

A I did not.

Q Did he ask you whether you had ever met with anyone from Armstrong?

A He did not.

Q Did you discuss your October 1966 meeting with

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Mr. Samuels?

A I did not.

Q Then after you had met with Mr. Samuels you telephoned Mr. Warnock; is that right?

A I did.

Q Who was Mr. Warnock?

A The president of Armstrong.

Q You told Mr. Warnock at that time that Mr. Samuels had been in touch with you; is that right?

A That is correct.

Q And then you told him that you wanted confidentiality imposed on any discussions that you might have with Armstrong; is that right?

A I reminded him of that request.

Q Isn't it true that the first time you ever made that request was in January 1967?

A In January of '67.

Q Yes.

A That is the first time.

Q Did you make that request to him immediately after Mr. Samuels had come up to you in Chicago?

A I questioned Mr. Warnock with regard to why Mr. Samuels was representing Armstrong and why it appeared to me that maybe Mr. Samuels knew about my visit.

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Q Was that the time that you asked Mr. Warnock to hold your conversations with him confidential?

A I had already made that request prior to that.

Q When was that, sir?

A During my visit of January 4, 5 and 6 to Lancaster of 1967.

Q And that was the first time that you made that request?

A That was the first time.

Q You testified earlier today that you have no recollection of a telephone conversation with Mr. Samuels in March 1967.

A That is correct.

Q Do you keep records of your telephone conversations?

A I do not. Not all of them, some of them.

Q Let me show you a statement of calls from Mr. Samuels' telephone number, which indicates that on March 28 there was a telephone call to Thomasville which lasted eight minutes, and ask you if that doesn't help you refresh your recollection that you did have a call.

MR. PENNOYER: Objection, your Honor. It hasn't been established that this is what it is.

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THE COURT: Is this in evidence?

MR. LESCH: It's not in evidence. I am using it to try to refresh the witness' recollection.

THE COURT: I think that is permissible.

A This does not refresh my memory. I do not recall speaking with him on that day.

Q Don't you recall that you had an eight-minute telephone conversation with him on March 28?

A No, I do not.

MR. PENNOYER: I further object, your Honor, on the ground that the testimony of Mr. Samuels is that that call was in early March. This apparently --

THE COURT: Overruled.

This may be another date, but -- what is it, March 8?

MR. LESCH: March 28.

THE COURT: March 28, yes.

Overruled.

Q Do you know whether --

THE COURT: This is cross examination.

Q Do you know whether anyone else at Thomasville spoke to Mr. Samuels at the end of March 1967?

A I had no reports that anyone did. I feel confident if anyone had, they would have told me as president

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of the company.

Q You have absolutely no recollection --

A I have absolutely no recollection of that.

MR. LESCH: I have nothing further.

THE COURT: Is this paper marked for identification?

MR. LESCH: No.

THE COURT: Let it be so marked.

(Plaintiff's Exhibit 21 marked for identification.)

THE COURT: Is that all, Mr. Lesch?

MR. LESCH: Yes, it is.

THE COURT: Then it is redirect now.

MR. PENNOYER: I wish to note again my exception to the use of that paper being presented --

THE COURT: I overruled your objection. I heard it, but I overruled it. I am not going to review reviews.

REDIRECT EXAMINATION

BY MR. PENNOYER:

Q Mr. Finch, the paper --

THE COURT: If we get very far into it, it may lay a basis for admitting it, but go ahead.

Q The paper which was shown to you has the word on it telephone, what appears to be a New York telephone

gwsg 13 Finch-redirect [239]

bill, T-H-O-M-A-S-V-L NC.

Is your company the only furniture company in Thomasville, North Carolina?

A Not by any means.

Q Can you name some of the others?

MR. LESCH: Objection.

THE COURT: Sustained. This means nothing, counsellor. It is not in evidence. It is not in evidence.

MR. PENNOYER: The question was asked, your Honor --

THE COURT: Yes, and he said he had no recollection of it.

As it stands now, there is no evidence whatsoever of any conversation between Samuels and this witness. That is the way it stands. You don't have to put in proof against a mirage.

MR. PENNOYER: I would like to make an offer of proof in this respect, and that is that what companies are in Thomasville, NOrth Carolina.

THE COURT: What is the question?

I will listen to the proffer. If we get so many proffers in this case, it will impose a burden on the Court. I don't see the relevance of it, but I will take the proffer.

gwsg 14 Finch-redirect [240]

We commence now with the proffer questions.

All right, go right ahead and do it.

Q What furniture companies besides your own are situated in Thomasville, NOrth Carolina?

A Mohasco -- strike that, please. That's not correct.

THE COURT: Just name the companies.

A The companies: Commercial Carving Company, Kroehler Plant, American of Martinsville has a facility, Bassett Furniture has a facility.

THE COURT: Is that all?

THE WITNESS: Erwin Lambeth.

Q If I suggested Thayer-Coggin, do they have a plant there?

A Yes.

Q And Carolina Seating Company?

A Carolina Seating does also.

MR. PENNOYER: I have no further questions.

THE COURT: That ends the proffer?

MR. PENNOYER: Yes.

THE COURT: Does it end the redirect?

MR. PENNOYER: Yes. I have no further questions.

THE COURT: All right. You are through with this witness then.

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gwsg 15jq1

You are excused.

(Witness excused.)

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MR. LESCH: I haven't called him, your Honor. I understand Mr. Pennoyer wants to get through with his witnesses.

THE COURT: Who is the witness again?

MR. LESCH: Mr. Berman.

MR. PENNOYER: I will now call Mr. Banzhaf.

M A X B A N Z H A F , a witness, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PENNOYER:

Q Mr. Banzhaf, what is your title with Armstrong as of today?

A I am vice president and treasurer.

THE COURT: Of what?

THE WITNESS: Armstrong Cork Company.

Q As of 1966 and 1967 what was it?

A I was staff vice president.

Q How long have you been with Armstrong Cork Company?

A Since 1938.

THE COURT: What is the exact business or what was

it in 1966 and '67 of Armstrong?

THE WITNESS: We made floors, ceiling materials, packaging materials. We were in the industrial contracting business and we made industrial specialties.

THE COURT: Did you make any furniture?

THE WITNESS: No, sir.

THE COURT: Flooring?

THE WITNESS: Yes, sir.

THE COURT: Floor coverings?

THE WITNESS: Yes, sir.

THE COURT:All right.

Q As of 1965 was Armstrong Cork Company interested in acquisitions?

MR. LESCH: I object to the form of the question.

THE COURT: Sustained.

MR. PENNOYER: This is a preliminary, your Honor.

THE COURT: It still has to be relevant. I don't see its relevancy.

Q In 1966 did you yourself participate in any acquisition studies?

A Yes, sir.

THE COURT: Acquisition studies?

MR. PENNOYER: Yes, sir.

Q In what capacity?

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A I was a member of what we call an acquisition evaluation committee.

THE COURT: For who?

THE WITNESS: Armstrong Cork Company.

Q When did you become a member of that committee?

A When it was formed in the mid-summer of 1965.

Q To put the matter in context, when did you first meet Mr. Samuels?

A In 1966, in August, August 25, I believe.

Q Prior to August 25, 1966, had you, in your capacity as a member of this acquisition committee, conducted any studies of Thomasville Furniture Industries?

A Yes, sir.

Q Will you tell us briefly what you did up until August 1, 1966?

MR. LEACH: I object to this.

(Question read.)

THE COURT: Sustained.

Q My question was meant to relate to your studies of Thomasville Furniture.

THE COURT: Reframe your question if you are going to try again, counsellor.

Q Mr. Banzhaf, as a member of the acquisition committee what did you do with respect to studying Thomasville Furniture?

A I was chairman --

MR. LESCH: I object.

THE COURT: This is before August 1966?

MR. PENNOYER: That is right, before August 1966.

THE COURT: With respect to studying it? Is the objection as to form?

MR. LESCH: On the ground that the fact that this man studied Thomasville is not relevant to any issue in this case.

THE COURT: I don't know whether that is a universal situation but it is suseptible to objection as to form anyway.

MR. PENNOYER: Your Honor, I am troubled.

THE COURT: You may be troubled and so forth but you have to get yourself out of the trouble or else you have to ask another question.

MR. PENNOYER: I will ask another question then.

Q What studies did you perform of Thomasville Industries, Inc. before August 1, 1966?

MR. LESCH: I object.

THE COURT: As to form?

MR. LESCH: Yes, as to form and as to relevance.

THE COURT: Sustained.

MR. PENNOYER: I respectfully submit --

THE COURT: I don't see that it makes any

difference what studies he made. It's whether he had any negotiations, isn't it?

MR. PENNOYER: The plaintiff in his case has spoken of his knowledge in the industry and we are entitled to establish that we studied the industry.

THE COURT: The plaintiff said so and I admitted very limited testimony about his experience in the field. But you aren't asking him about any expertise.

MR. PENNOYER: I am trying to show that this company was not -- and may I also state that Mr. Samuels has testified that he presented this company by name to us when he first met us. I think we are entitled to ask it.

THE COURT: You can ask any question to attempt to counteract that as to whether Samuels came to him or did anything about it. You don't have to go into the studies which he may have made about Thomasville.

Sustained.

MR. PENNOYER: May I note an exception?

THE COURT: You don't need any in the Federal Court. It's automatic. They come naturally.

Q Mr. Banzhaf, did you know anything about Thomasville Industries before you met Mr. Samuels?

A Yes, sir.

MR. LESCH: Objection.

THE COURT: Overruled.

Q What did you know about him?

MR. LESCH: I object to that as to form.

THE COURT: It is rather vague. Sustained as to form.

About what general features did you have some knowledge of?

Q What general features did you have knowledge about Thomasville?

A I called on Thomasville in November of 1965.

MR. LESCH: I object on the grounds this is not responsive.

THE COURT: Read the question and listen, Mr. Banzhaf, and try to answer the question directly.

(Question read.)

A I knew about their size. I knew about the scope of their product line. I knew about their management. I knew how they were regarded in the industry and I knew that their policies and practices were reasonably compatible with our own.

MR. LESCH: I move to strike all that as conclusory.

THE COURT: Only the last will be stricken. The compatibility will be stricken, shall I say.

Q Had you paid a visit to the Thomasville Industries Plant before you met Mr. Samuels?

A Yes.

Q How many visits?

A Two.

Q When was the first?

A The first was in November of 1965.

Q And the second?

A In January of 1966.

Q Had you met Mr. Finch on either of those visits?

A The second one.

Q Briefly, what was the nature of your discussion with Mr. Finch on that occasion?

THE COURT: Generally, what did he say and what did you say?

THE WITNESS: I told him that what I wanted to discuss I wanted him to thoroughly understand the manner in which I was coming to him, that I didn't want him to say anything to me that he would not say or he would not want to say since we might someday be a competitor of his.

We might even be a supplier, a potential supplier, or we might be a partner. On that basis we generally discussed some of the technical

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capacities that Armstrong thought that we had that we could bring to the furniture business and thus improve some of the problems they were beginning to have in the furniture business of rising wood costs, shortages of wood, hard wood, the rising labor costs. We thought we could make some contributions.

THE COURT: What did he say?

THE WITNESS: He listened, I think, very attentively. One of the points which he focused --

THE COURT: What did he say in substance?

THE WITNESS: His interest in plastics and the applicationof plastics. We discussed this. We went to his showroom where he pointed out some of the applications of plastics they were engaged in or using at that time, recognizing they were very preliminary and more in this direction would have to be done in the future.

THE COURT: All right.

3a Q To whom did you report as a member of the acquisition committee?

A He reported to Mr. J. H. Binns who was chairman of that committee.

Q Did you report to Mr. Binns your views of Thomasville Industries as a potential acquisition before you met Mr. Samuels?

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MR. LESCH: Objection.

THE COURT: Sustained.

Q Did you yourself have any conclusions before you met Mr. Samuels as to the viability of Thomasville as an acquisition?

MR. LESCH: Objection.

THE COURT: Sustained.

Q I believe you testified your first meeting with Mr. Samuels was on August 25, 1966.

A Yes, sir.

Q Where did that occur?

A Mr. Donnelly's office in Armstrong Cork Company.

Q Who was present besides yourself and Mr. Samuels?

A Mr. Donnelly.

Q What was the conversation? Who said what?

A At that time I had a report that I had prepared --

THE COURT: No, who said what, not what you are about to state unless you told somebody that. It's what you said and what Samuels said or somebody else from Armstrong.

THE WITNESS: Mr. Donnelly asked Mr. Samuels to review a report that I had prepared concerning the Morgan Manufacturing Company, a maker of furniture parts that we were considering or I was considering acquiring

jqsg 10 Banzhaf-direct [250]

because I thought it would represent a pilot plant facility for us to test some of our technical capabilities.

Mr. Samuels was provided with an office somewhere in the building, I don't know where, and he studied the report for perhaps an hour and came back into the room, in Mr. Donnelly's office, and told us he thought the whole proposition was ridiculous or words to that effect.

Q Is that the entire conversation?

A That is what I recall.

Q Was anything else said concerning Mr. Samuels' review of the report?

THE COURT: This was an oral review?

THE WITNESS: It was at that time.

THE COURT: I don't understand the question.

Q Was Mr. Samuels requested to do anything more other than regarding that review?

THE COURT: About Morgan?

MR. PENNOYER: Yes.

THE WITNESS: He was asked to put it in writing by Mr. Donnelly.

Q Were you present when that request was made?

A I really don't recall.

THE COURT: Then you don't know whether the request was made, do you?

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THE WITNESS: Yes, I do.

THE COURT: Did you hear it made?

THE WITNESS: I do not know that.

THE COURT: I don't see how you could if you weren't there.

Q Did you attend the meeting at the Wachovia Bank with Mr. Finch on October 18, 1966?

A I did.

Q Who was present besides yourself and Mr. Finch?

A Mr. Donnelly and Mr. Ellis.

Q How was that meeting set up?

Who arranged for the meeting?

MR. LESCH: I object.

Q Did you arrange for the meeting?

THE COURT: Sustained.

MR. LESCH: Same objection.

THE COURT: Sustained.

You may ask who was there and what was said if it involved both Armstrong and Thomasville.

MR. PENNOYER: May I ask if Mr. Samuels arranged it?

THE COURT: Of course.

Q Did Mr. Samuels arrange that meeting?

MR. LESCH: Objection.

THE COURT: Sustained unless he knows of his own

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knowledge.

Q Do you know of your own knowledge whether Mr. Samuels arranged for that meeting?

A I do.

Q Did he?

A He did not.

THE COURT: All right.

Q What was said at that meeting by the participants including yourself, Donnelly and Finch?

THE COURT: Get the participants.

MR. PENNOYER: There was Mr. Finch, himself, Mr. Donnelly and Mr. Ellis.

THE COURT: Samuels was not there?

THE WITNESS: No.

MR. LESCH: I object to the conversation.

Q Who was present at that meeting?

A Mr. Finch, Mr. Donnelly, Mr. Ellis and myself.

Q Will you briefly state the substance of the conversations you had, you and the other gentlemen, at that meeting on that day?

MR. LESCH: Objection.

THE COURT: Overruled.

A I was the spokesman for the Armstrong group. I outlined to Mr. Finch in reasonable detail the

contributions that I thought we could make to the furniture industry from a technical point of view, from a marketing point of view, and I also outlined why I thought that a merger between our two companies would be very desirable and of considerable benefit to the two companies.

THE COURT: Is that the end of your answer?

THE WITNESS: You asked what I said, is that correct?

MR. PENNOYER: Yes.

THE WITNESS: That is it in essence.

Q I ask you now, what was the response to your statement?

A Mr. Finch said -- and I believe I can almost quote him exactly -- "Up to this minute I have always assumed that we would go it alone. At this particular point I am not sure. I certainly must bring this to the management of our company and to our board and I will do so and let you know."

Q A few weeks before this Wachovia meeting had you met with Mr. Samuels?

A Yes, I did.

Q Where?

A In Chicago.

Q What were you doing with him on that occasion?

A He had told us that there was a considerable block of Kroehler stock that he knew was available and that he thought that the availability of the stock should be used as a basis for talking to the Kroehler management about a possible merger or acquisition.

THE COURT: When was this meeting with Samuels in Chicago?

THE WITNESS: That would be the latter part of September, as I recall.

THE COURT: Was that at a trade sale or trade exhibition or what?

THE WITNESS: No, sir. We met first at the Kroehler offices just west of Chicago.

THE COURT: Was that accidental?

THE WITNESS: No, Mr. Samuels arranged that.

THE COURT: And you met him there?

THE WITNESS: Yes, sir.

THE COURT: Go ahead.

k 3b

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Q Who else was present?

A Mr. Donnelly. That was from Armstrong. There was Kenneth Kroehler, as I recall. There were other people of Kroehler who I cannot remember. Mr. Samuels was there and I believe either a lawyer of Kroehler or a broker, investment banker, I don't recall, but someone else.

THE COURT: You said Kroehler?

THE WITNESS: Yes, Kroehler.

Q How long did that meeting take?

A As I recall, we got there in the morning and we had lunch and we left in the afternoon sometime.

THE COURT: Then you could still go on in at about 11:55 and have lunch and a few minutes later take off for the afternoon.

Was there anything else discussed except this Kroehler proposition or whatever it was submitted or spoken of by Samuels? Was there anything else talked about at that time?

THE WITNESS: At Kroehler?

THE COURT: At this meeting, yes.

THE WITNESS: No, sir, not there.

THE COURT: Get on to something else, counsellor.

Q Following that meeting did you see any more of Mr. Samuels that day?

A Yes. We had dinner together.

THE COURT: Just answer yes.

THE WITNESS: Yes.

Q Where and when?

A We had dinner that evening, I believe, at the airport motel.

THE COURT: Who is we?

THE WITNESS: Mr. Donnelly, Mr. Samuels and I.

Q Was there a discussion that evening about Thomasville?

A My memory is not entirely accurate as to the details but I seem to recall that we compared the Kroehler possibility with Thomasville to some small degree.

Q Did you inform Mr. Samuels that you had plans to go to a meeting at Wachovia Bank?

A Not to my knowledge.

Q You did not?

A No.

Q Did you hear Mr. Donnelly inform him?

A I don't remember that.

Q Did you ask Mr. Samuels to do anything about Thomasville?

A No, sir.

Q On that occasion?

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A Or on any other occasion.

Q At any time?

A No, sir.

THE COURT: By the way, prior to the end of 1967 did Armstrong engage in some use of products as a result of some combinations of substances?

THE WITNESS: If I understand your question, your Honor, you are talking about what is generally called in technical circles a field and composit?

THE COURT: Yes.

THE WITNESS: Yes.

THE COURT: What were the composits, the general nature of the products which were a result of the composites?

THE WITNESS: Wood technology to make ceiling products, structural boards, structural insulation boards, structural boards used in the mobile home industry, hartboards.

THE COURT: Any plastics?

THE WITNESS: Yes, a considerable number of plastics. Plastics for floors, plastics to make bottles, plastic closures, structural foam plastics, structural foams, foam plastic insulations.

THE COURT: All right. I think that has gone far enough.

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Q After the meeting with Mr. Samuels in Chicago, that is the Kroehler meeting, did you see him again at any time up until the merger took place?

A I don't believe so.

THE COURT: Until after the merger?

MR. PENNOYER: Yes, until after the merger.

THE WITNESS: I don't believe so.

Q Did you have any conversations with him thereafter?

A Yes, he called me on the telephone.

Q When?

A Sometime after we were visiting Kroehler. I don't remember the exact date, within a week to ten days.

THE COURT: What month and year?

THE WITNESS: 1966 and it would probably have been in the latter part of September, early October, he called me to tell me that the Kroehler people were not interested in any acquisition or merger.

THE COURT: Is that all he said?

THE WITNESS: Yes, sir.

Q Did you attend the meetings in Lancaster with the Thomasville people that occurred on January 2, 3 and 4 of 1967?

A Yes.

MR. LESCH: I think Mr. Finch testified that it was the 4, 5 and 6.

THE COURT: I think so.

MR. PENNOYER: I will correct my question to read 4, 5 and 6.

THE COURT: Remember ask it so the record will be clear.

Q Did you attend the meetings in Lancaster on the 4, 5 and 6th of January, 1967 attended by the Thomasville people?

A Yes, sir.

Q And following that meeting did you receive any calls from Mr. Warnock concerning Mr. Samuels?

A I did.

Q When?

A I can't pinpoint the date exactly. It would be somewhere between the 11th, 14th, 15th of January. I don't know the exact date.

Q What did Mr. Warnock say to you at that time regarding Mr. Samuels?

A He was very exercised.

THE COURT: What did he say?

THE WITNESS: He said he had received a call from Mr. Finch and that Mr. Finch had said that Mr. Samuels had

jqe 6 Banzhaf - direct [260]

talked to him in Chicago and that Mr. Samuels had indicated to Mr. Finch that he was representing us in some capacity.

Q What did Mr. Warnock as you to do if anything?

A As I recall, he asked me to get ahold of Fred Donnelly and to have Fred Donnelly call Mr. Samuels and make abundantly sure that he recalled our original conversations with him that he was not to have any part of Thomasville.

Q Did you subsequently call Mr. Donnelly?

A I talked to Fred, yes.

Q What did you say to him?

A I related the conversation with Mr. Warnock.

Q To your knowledge, did he call Mr. Samuels after you talked to him?

THE COURT: Did who call?

Q Mr. Donnelly call Mr. Samuels, to your knowledge?

MR. LESCH: Objection to the form of the question.

THE COURT: Sustained.

Unless he were present and heard the call he would not know anything except from hearsay.

Q Who arranged the meeting in Lancaster on the 4th, 5th and 6th with Thomasville people?

MR. LESCH: Objection.

THE COURT: Sustained. That is not material.

MR. PENNOYER: Your Honor, it's been claimed here

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that Mr. Samuels has been arranging meetings for us and I submit that it is material.

THE COURT: Maybe it is. Are you going to lay any foundation for his knowledge though?

Q Do you have any knowledge of who arranged the meeting at Lancaster with the Thomasville people on January 4, 5 and 6, 1967?

MR. LESCH: I object to the form of the question.

THE COURT: Overruled. He can say yes or no.

THE WITNESS: Yes.

Q Who did?

A I did.

MR. LESCH: Objection.

THE COURT: You will have to give the foundation, counsellor. You can't just say that.

If he heard Samuels or Samuels called him, yes. If somebody in his company told him that Samuels did it it's hearsay. You have to get down to some foundation which is admissible.

Q Who invited the Thomasville people to Lancaster?

THE COURT: If he knows.

Q If you know.

A I did.

Q When did you do that?

jqe 8 Banzhaf - direct [262]

A I invited Mr. Finch and the Thomasville people to Lancaster--

THE COURT: The question is when.

THE WITNESS: On October 18, 1966.

Q Did Mr. Samuels have anything to do with the invitation of Thomasville to come to Lancaster?

A No.

MR. LESCH: Objection.

THE COURT: Sustained.

You may move to strike if you want to get the answer out.

MR. LESCH: Yes, I do move to strike.

THE COURT: Granted.

Q After the Lancaster meeting what was your next meeting with Thomasville representatives? I mean the Lancaster meeting on the 4th, 5th and 6th of January 1967.

A It was in August of 1967.

Q Where did that occur?

A Thomasville, North Carolina.

Q With whom?

A With Mr. Warnock and Mr. Binns and, of course, the Thomasville people.

THE COURT: Well, were you there?

THE WITNESS: Yes, sir.

Q What Thomasville people?

A Mr. Finch, Mr. Jennings, Mr. Doherty, Mr. Lynch, Mr. Thrower, Mr. Pennington, Mr. Routum and Mr. Watlington of the Wachovia Bank, a director of Thomasville.

Q How long did this meeting take?

A Two days.

Q And you attended the entire two days of meetings?

A Yes, sir.

THE COURT: Were all of these other people there both days?

THE WITNESS: Not all of them, no, sir.

THE COURT: This sounds like some sort of a director's meeting with the number that were there but go ahead, counsellor. You will have to get down to a certain day and elicit who was there and who said what.

Q Will you give us the substance of the discussions on the first day?

MR. LESCH: Objection.

THE COURT: Who was there?

Q Who was there the first day?

THE COURT: You don't have to list everybody.

THE WITNESS: Certainly Mr. Finch was there, Mr. Thrower was there.

THE COURT: Any other officers of Thomasville?

THE WITNESS: There were officers of Thomasville and, of course, Mr. Doherty was there and Mr. Watlington was there that day or that evening.

THE COURT: They were officers of Thomasville?

THE WITNESS: Yes, sir, Mr. Watlington being a member of the Board.

THE COURT: Who were there from Armstrong?

THE WITNESS: Mr. Warnock, Mr. Binns and myself.

THE COURT: All right. Now you can ask him who said what.

Q Who said what on the first day?

MR. LESCH: Objection.

THE COURT: Overruled.

Just give us the substance.

A Mr. Finch told us of the furniture making facilities they had at Thomasville, showed them to us.

THE COURT: Did he say anything else in substance?

THE WITNESS: Your Honor, there were many things said that day. I can't recall them all.

THE COURT: All right.

Q Can you remember the subjects that were covered?

A Yes, we were looking at the furniture making facilities, the marketing capabilities of Thomasville Furniture Industries.

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Q Let's go to the second day.

Who was present on the second day meetings?

THE COURT: Did this witness say anything?

Q Did you say anything the first day?

A I don't recall.

THE COURT: Go on to the second day.

THE WITNESS: The second day we met, we being--

MR. LESCH: Objection to this also.

THE COURT: Overruled.

THE WITNESS: Mr. Finch, Mr. Doherty, Mr. Warnock, Mr. Binns and I--there may have been another person--met in the Thomasville Board of Directors room on the second day and the discussion concerned possible merger or acquisition.

Q Was a possible merger or acquisition proposed by somebody that day at that meeting?

A Oh, yes.

Q By whom?

A I can't recall which one of us. I would guess--

THE COURT: Don't guess.

Q What is your best recollection?

A My best recollection would be that it was Mr. Warnock.

Q Do you remember what his words were or in substance

what he said?

A I don't remember now.

Q After that meeting did you have any further meetings thereafter with Thomasville people?

A Yes.

Q When?

A In February of 1968.

Q Where?

A At Thomasville Furniture Industries Headquarters and at the Willowcreek Golf Club.

Q Is that near Thomasville?

A It is near High Point.

Q Who from Thomasville was present on that occasion?

A Mr. Finch.

Q Let's not take the golf club but the other meeting first.

A Mr. Finch.

Q Anybody else from Thomasville?

A No.

Q Who was present from Armstrong besides yourself?

A No one.

Q What was the discussion at that meeting?

MR. LESCH: The same objection, your Honor.

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THE COURT: Overruled. It isn't a matter of form.

Just tell us who said what or the substance of it.

A At the factory for the most part we changed pleasantries.

Q And on the golf course who was present?

A At the golf club, excuse me. Mr. Finch and myself.

Q Anybody else?

A No, sir.

Q Who said what at that time or during that time?

A I said to Mr. Finch that you promised me when we terminated our relationships that if you could ever help me you would be glad to do so and I am soliciting your help now.

I said that I had with me a list of furniture companies in the North Carolina area that I knew and I asked him if he would discuss them with me and tell me his opinion of their suitability to a merger with the Armstrong Cork Company, which he did.

Q At that time?

A Yes, at that time, which he did. We discussed this at some great length.

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THE COURT: Was there any discussion then about the merger or any prospective merger of Thomasville and Armstrong?

THE WITNESS: Yes, sir, your Honor.

THE COURT: State that.

THE WITNESS: After we finished discussing this list I told him, I said "You broke my heart" and he said "I have agonized over that decision many, many times since having made it and I do not know whether or not we made the right decision last November."

He then said to me "make me a promise, when and if you go to see these companies you will make no arrangements with them until you see me first." And I agreed to that.

Q Was that the total conversation?

A In substance, yes.

Q At that time?

A Yes.

Q Did you have another meeting subsequently with the Thomasville people?

A Yes, sir.

Q When?

A The next one was a short time later when I did exactly as he suggested. I visited several of these com-

panies and I saw him at the end of that visit and we had dinner together, as a matter of fact.

Q Where?

A At the Stringham Splinter Club of High Point, North Carolina.

Q You said a short time later. Was it a matter of a few weeks?

A A week.

Q What kind of a club was that?

THE WITNESS: Just a club, your Honor, an eating club at the top of a hotel.

THE COURT: I thought maybe it was a tennis club.

Q What was the conversation at that time with Mr. Finch at the club?

A I told him that, in my opinion, none of these companies that I had visited were anywhere as suitable to us as Thomasville or that I didn't think the combination that we might effect between ourselves or anyone of those companies would be nearly as good or make nearly as much progress as we would make if merged with Thomasville.

THE COURT: What did he say to that?

THE WITNESS: I think he generally agreed and offered to reopen the discussions.

Q When was your next meeting with any representa-

jqe 16 Banzhaf - direct [270]

tive of Thomasville?

A He said that he wanted two people in his--

THE COURT: The question is when.

THE WITNESS: As I recall it was in May.

THE COURT: '68?

THE WITNESS: Yes, of '68, when Mr. Thrower and Mr. Wilson visited Lancaster.

THE COURT: Were they officers of Thomasville?

THE WITNESS: Yes.

Q Do you remember their positions?

A Mr. Thrower was in or ran the founder's division. Mr. Wilson had several capacities, and I don't remember which one he held at that time, but I believe it had something to do with design.

THE COURT: With what, sir?

THE WITNESS: Furniture design, your Honor.

Q Let's go to the next meeting you had with anybody from Thomasville, any represntative, after this Lancaster visit by Thrower and--who was the other gentleman?

A Wilson.

Q What was the next meeting you had after that?

A Mr. Binns and I went to Sea Island with Mr. Finch. Mr. Binns and I and our wives met at Mr. Finch's cottage at Sea Island with him and his wife.

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THE COURT: When?

THE WITNESS: I get a little fuzzy as of the dates but as I recall it was May or June of 1968.

Q Did you talk about possible affiliation between Armstrong and Thomasville on that occasion?

A Yes, we did.

Q What was said in regard to that matter?

MR. LESCH: Could we have a date?

THE COURT: He said in May. Can you fix the date in May?

THE WITNESS: I am sorry, I can't.

MR. LESCH: I object also on the same grounds as previously.

THE COURT: Overruled.

(Question read.)

A Yes, we did.

end

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Q What was said?

A I don't recall.

Q Did you have any meetings after this Sea Island visit with any representative of Thomasville?

THE COURT: This May Sea Island visit.

A Yes, I did. I went to Chicago and met Mr. Finch and Mr. Thrower there, as I recall, in a room in the Drake Hotel.

THE COURT: When?

THE WITNESS: This would be the first part of June of 1968.

Q On that occasion did you discuss possible merger or affiliation?

A Yes, we did.

Q What was the discussion at that time? Who said what?

A I recall our talking about the nature of the transaction financially. It would be, in essense, stock for stock, tax-free exchange.

I also remember talking about the possible positions that some of the various officials, Thomasville officials, would hold in the merged organizations.

We talked also about some of the operating mechanics, if you will, of where our offices would be, where

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they might be located, so on.

Q Have you completed your discussion now of the Drake Hotel meeting?

A Yes.

Q Your description of the discussion?

A Yes.

Q After the Drake Hotel meeting in Chicago, did you have any subsequent meeting with Mr. Finch or any representative of Thomasville?

A Yes.

Q When was the next one?

A As I recall, the 30th of June.

Q Where?

A At Sea Island, Georgia.

Q Is this at Mr. Finch's house there?

A At Mr. Finch's house.

Q Who went from Armstrong to that meeting?

A Mr. Warnock, Mr. Binns and myself.

Q Who was present on the Thomasville side?

A Mr. Finch, Mr. Thrower and Mr. Doherty.

Q Was possible merger or affiliation discussed on that occasion?

MR. LESCH: Same objection, your Honor.

THE COURT: If it is an objection as to form, I

will sustain it.

MR. LESCH: It is not as to form, it is as to the content of these conversations.

THE COURT: Overruled.

Q Who said what?

MR. PENNOYER: I don't think I got an answer to the last question.

Would you read the last question?

(Question read.)

THE COURT: Answer that.

A Yes, sir.

Q Who said what on that subject?

A Mr. Warnock talked to Mr. Finch about the number of shares to be exchanged. Mr. Finch responded. I do not remember the exact number he was talking about.

Mr. Finch's response said in essense that the merger of Drexel into U.S. Plywood-Champion Paper set a pattern, and he felt that his stockholders would not accept anything less.

We generally agreed.

There was some relatively minor detail, which escapes me now, as to the number of shares and the form of the exchange.

We then had--Mr. Warnock and Mr. Finch then dis-

cussed how many members of the Thomasville people would be represented on our board, and that was agreed upon.

We shook hands all around, as I recall, about midnight or maybe even shortly after.

Q After that what happened?

A The next morning to comply I believe with the disclosure laws, so forth, we hurried to Winston-Salem, met in the law offices of the Thomasville lawyer, Mr.--I don't remember the whole name--Mr. Rice, Leon Rice's office.

We each polled our Board of Directors.

THE COURT: How did you do that?

THE WITNESS: By the telephone.

A (Continuing): We signed a document that subsequently had to be ratified, as I recall, by the Thomasville stockholders.

THE COURT: By the way, we have heard about these various meetings at Sea Island, in Winston-Salem and so forth.

Do I understand correctly that Armstrong had a plane of their own?

THE WITNESS: Yes, sir.

THE COURT: That is how you traveled back and forth on these occasions?

THE WITNESS: Not invariably.

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THE COURT: Part of the time.

THE WITNESS: Part of the time, yes, sir.

THE COURT: All right. It just explains the speed with which some of these transitions occurred.

All right. Anything else?

MR. PENNOYER: May I just have a minute, your Honor?

(Pause.)

MR. PENNOYER: I have no further questions at this time, your Honor.

THE COURT: We will have a short recess at this time.

(Recess.)

MR. LESCH: May I proceed?

THE COURT: Yes.

xx CROSS EXAMINATION

BY MR. LESCH:

Q Mr. Banzhaf, you said that your first meeting with anyone from Thomasville occurred in 1965, is that right?

A Yes, sir.

Q Is it true that there was no discussion of merger or acquisition at that meeting?

A That is true.

Q And that the only thing that you did at that

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gawe 6 Benzhaf - cross [277]

meeting was to pick the brains off Mr. Lynch about the furniture industry?

MR. PENNOYER: Objection as to form.

THE COURT: Sustained as to form.

Q Who was Mr. Lynch?

A Mr. Lynch was an officer of Thomasville. I thought he had charge of manufacturing at that time.

Q Do you recall being examined in this case at Lancaster, Pennsylvania, on November 23, 1971?

A Yes.

Q Do you recall being asked these questions and giving these answers, page 9, line 6:

"Question. Would it be fair to say just to use a phrase that you were essentially picking his brains with respect to the furniture industry?

"Answer. That--"

MR. PENNOYER: Objection.

THE COURT: What is the objection now, form?

MR. PENNOYER: Form, yes, sir.

THE COURT: Too late now. I think the stipulation usually stipulates that objection as to form are waived. How about this occasion?

MR. PENNOYER: That is correct, your Honor.

THE COURT: That is my usual understanding.

gawe 7 Benzhaf - cross [278]

All right.

Q "Question. Would it be fair to say just to use a phrase that you were essentially picking his brains with respect to the furniture industry?

"Answer. That might be accurate."

Did you give that answer to that question?

A Yes.

Q Was it correct?

A Yes.

Q Was the next meeting that you had with anyone from Thomasville in January 166?

A Yes.

Q Was that meeting with Mr. Finch?

A Yes.

Q Is it correct that there was no discussion of any merger or acquisition at that time either?

A That is correct.

Q And the next time that you met with Mr. Finch or anyone else from Thomasville was in October, is that correct?

A That's correct.

THE COURT: What year again?

Q October 1966.

A Yes, sir.

gawe 8 Benzhaf - cross [279]

Q And you met with Mr. Samuels for the first time in August 1966, is that right?

A Right.

Q So that prior to your meeting with Mr. Samuels in August 1966 you had never discussed merger or acquisition with anyone from Thomasville, Industries, is that correct?

A That's correct.

Q When did you meet with Mr. Samuels for the first time?

A Augusut 25, 1966.

Q Didn't you meet with him for the first time on August 10, 1966?

A No, I don't believe so.

Q Let me refer to your deposition at page 23, starting at line 11:

"Question. I think you testified that the meeting"--this is the meeting with Mr. Samuels. At the top of the page it says,

"Question. Do you recall who arranged the first meeting with Mr. Samuels?"

Then there's colloquy and then the--I better read it.

"MR. PENNOYER: That is his meeting?

"THE DEPONENT: My meeting with Mr. Samuels?"

gawe 9 Benzhaf - cross [280]

By Mr. Schwartzman of my firm, who was taking your deposition.

"Question. Yes.

"Answer. I don't know whether it was Mr. Binns or Mr. Donnelly. I know where we met. I don't recall who arranged it.

"Question. I think you testified that the meeting took place sometime in the summer of 1966.

"Answer. Right.

"Question. Where did it take place?

"Answer. Fred Donnelly's office.

"Question. In Lancaster?

"Answer. Right.

"Question. Does the date August 10, 1966 sound right?

"Answer. Thiat is reasonable."

Did you give those answers to those questions at your deposition on November 23, 1971?

A I did.

Q Were those answers true and correct?

A To the best of my knowledge at this time, yes.

Q So that your first meeting with Mr. Samuels took place on August 10, 1966?

A No, that's not correct.

gawe 10 Benzhaf - cross [281]

Q When this question and answer were asked of you:

"Question. Does the date August 10, 1966 sound right."

"Answer. That is reasonable", were you in error when you said that?

A If you are trying to say that I fixed the date of August 10, I would be in error then, yes.

Q Now your recollection is that you did not meet him onAugust 10, but you met him on August 24 for the first time?

A Exactly.

Q Prior to your first meeting with Mr. Samuels, had you heard that Armstrong was thinking of employing an advisor on acquisitions, acquisition methodology, someone to help us out with at that time our generals, our general acquisitions program?

A Yes, sir.

Q Was that person Mr. Samuels?

A Yes, sir.

Q At your first meeting with Mr. Samuels he recommended against Armstrong purchasing the Morgan Furniture Company, is that true?

A Yes, sir.

Q That was an acquisition that you had recommended,

is that correct?

A I had not yet recommended it, no.

Q You had studied the Armstrong Furniture?

A Yes.

Q You were considering it at that time?

A Yes, sir.

Q Had you told anyone that you were in favor of Armstrong purchasing Morgan even if you didn't make a formal recommendation to that effect?

A Oh, I am sure I did.

Q You told Mr. Donnelly, isn't that true?

A Oh, I could have.

Q And Mr. Donnelly disagreed with you, didn't he?

A Oh, I don't know that.

Q You don't recall that Mr. Donnelly disagreed with you?

A No, I do not.

Q Mr. Donnelly didn't consider it worthwhile--

THE COURT: How does he know?

Q Didn't Mr. Donnelly tell you that he didn't consider it worthwhile for Armstrong to buy Morgan?

A No, sir.

Q In any event, you do recall that Mr. Samuels came out strongly against the purchase of Morgan?

gawe 12 Benzhaf - cross [283]

A Yes, sir.

Q Was Mr. Samuels advice followed in that respect?

A Must have been. We didn't do it.

Q At your meeting with Mr. Samuels--

THE COURT: What date?

Q --on August 25, do you recall discussing any other furniture companies other than Morgan?

A We may have.

Q Didn't you discuss Thomasville?

A We might have.

Q And Kroehler?

A No.

Q You didn't discuss Kroehler?

A No, sir.

Q And Mohasco?

A No, sir. It may have come up, yes.

Q Mohasco?

A It might.

Q Didn't you bring in some Standard and Poors sheets with financial information about those companies?

A No, sir.

Q Did you bring in some Moody's sheets?

A No, sir.

Q Did you bring in any blue sheets with financial

information about the company?

A No, sir.

Q Didn't bring in any information about any of those companies?

A No, sir.

Q Did anyone from Armstrong at this meeting on August 25 tell Mr. Samuels to stay away from Thomasville?

A I can't vouch for that on that day, no, sir.

Q You have no recollection of anyone telling that to Mr. Samuels, is that right?

THE COURT: At that time?

Q At that time?

A No, sir.

Q And then your next meeting with Mr. Samuels that you testified to occurred when you visited the Kroehler Manufacturing Company, is that correct?

A Yes, sir.

Q That was in Chicago?

A Yes, sir, near there, Napierville, Illinois to be precise.

Q At that time I believe you testified that there was some comparison of Thomasville and Kroehler Manufacturing Company?

A That evening.

gawe 14 Benzhaf - cross [285]

THE COURT: I beg your pardon?

THE WITNESS: That evening.

Q Will you tell us what was said about the comparison between Kroehler and Thomasville that evening?

THE COURT: And by whom.

Q And by whom.

A As nearly as I can recall, I made the remark that--I saw no--there was no comparison. Kroehler was not the kind of company that we particularly wanted. It was in the upholstry business.

We were primarily interested in the case goods business. I didn't think that the caliber of the management of Kroehler began to compare with that of Thomasville.

Q Did you tell Mr. Samuels at that time that Armstrong was interested in acquiring Thomasville?

A I don't recall that I did or that I didn't.

Q In any event, you do remember comparing Kroehler with Thomasville on that occasion?

A I seem to recall.

THE COURT: He said so, counsellor.

Q I refer to page 34, line 20 of your deposition and ask you whether you remember giving this answer to this question:

"Question. Do you remember comparing Kroehler

with Thomasville?

"Answer. Again, I don't recall, but it certainly would not be unlikely."

So at that time you did not recall, is that correct?

A That is correct.

Q And since that time you do recall that conversation?

A I seem to think so, yes, sir.

Q At that time, Mr. Banzhaf, did Mr. Samuels tell you that he knew that Thomasville was available for acquisition?

A Not that I recall.

Q Did he tell you that on August 25?

A No.

Q He never told you that?

A No, sir.

Q And then on October 18 you met with Mr. Finch, is that right?

A That's correct.

Q Did you tell Mr. Finch that you had visited Kroehler with Samuels?

A No, sir.

Q Let me refer to page 60 of your deposition, line

gawe 16 Benzhaf - cross [287]

18. This is after a discussion of your meeting with Mr. Finch, the following question appears at line 18.

"Question. Did you tell them that you had gone to visit the Kroehler Company with Mr. Samuels?

"Answer. I am sure we did."

Does that refresh your recollection that you did tell Mr. Finch?

A You will have to refer--tell me who I am talking to at that time. When you say--them and where?

Q I am referring to your October 18, 1966 meeting.

A Yes.

Q I will--

MR. PENNOYER: Your Honor, in view of the question, may I request that the entire series of questions before been read--

THE COURT: I take it counsel is trying to find out who was there.

MR. LESCH: Yes. I will go back and read the whole series of questions.

THE COURT: All right.

MR. PENNOYER: I think if you go back to line 9, you will have it.

MR. LESCH: All right. I will adopt Mr. Pennoyer's suggestion.

nd 4a

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Q Starting at line 9:

"Q Did you report to the committee that Mr. Finch had stated that up to that point Thomasville had wanted to go it alone?

"A I think he said I assumed that we would go it alone. I can't recall. I am sure I did, but I don't recall specifically.

"Q Did the name of Mr. Samuels come up at that meeting?

"A Not that I recall.

"Q Did you tell them that you had gone to visit the Kroehler Company with Mr. Samuels?

"A I am sure we did."

THE COURT: By "them," you refer to whom?

MR. LESCH: To the committee, as I understand it.

THE WITNESS: Yes.

Q Is it your testimony that you told the committee that you had gone to Kroehler with --

A Yes.

Q What committee was this?

A The acquisition evaluation committee.

THE COURT: Of Armstrong?

THE WITNESS: Of Armstrong Cork Company.

Q Between the Kroehler visit and January --

THE COURT: The Kroehler visit?

Q Your visit to the Kroehler Manufacturing Company in September or October of 1966 and January 1967, did you have any communications at all with Mr. Samuels?

A He called me once on the telephone as I recall.

Q When was that?

A It was a week, 10 days, something following our visit to Kroehler. I can't remember the exact date.

Q Did you discuss Thomasville on that occasion?

A No, sir.

Q What did Mr. Samuels say to you and what did you say to him?

A He said that the -- he had received a call from the Kroehler people saying that it was not -- they did not wish to be acquired, and I thanked him.

As I recall, we had received a similar telephone message.

Q Did you have any other conversations with Mr. Samuels in that period of time, namely from the Kroehler visit in September or October 1966 until January 1967?

A Other than that phone call, no.

Q I take it then we haven't established that you did not tell Mr. Samuels at any time that he should

stay away from Thomasville; is that right?

MR. PENNOYER: I object to the form.

THE COURT: Sustained.

Q Did you tell Mr. Samuels at any time prior to January 1967 that he should stay away from Thomasville?

A I did not, no.

Q As far as you know, no one else from Armstrong told Mr. Samuels to stay away from Thomasville prior to January 1967; is that right?

A We discussed it and I was told that he was told, yes.

Q You were told by whom?

A Mr. Binns.

Q When did Mr. Binns tell you that?

A This would be either on August 10 or August 25. I cannot remember exactly which date.

Q Did Mr. Binns tell you --

THE COURT: What year?

THE WITNESS: '66.

Q Did Mr. Binns tell you that he himself had told Mr. Samuels to stay away from Thomasville?

A He did.

Q Binns told Samuels?

A Yes, sir.

Q When did Mr. Binns allegedly tell Mr. Samuels to stay away from Thomasville?

A He did this at the luncheon they had at the country club. That would have been August 10.

Q August 10?

A Yes, sir.

Q Who was present at this luncheon?

THE COURT: Wait.

Were you there?

THE WITNESS: No, I was not there.

Q Did Mr. Binns tell you who was present?

A Yes. He told me Mr. Warnock was present. I believe Mr. Donnelly was there. Mr. Warnock was there.

Q Anybody else?

A Mr. Samuels, of course.

I do not know who else.

Q Did you hear on any other occasion that Mr. Samuels was told to stay away from Thomasville other than that time that Mr. Binns told you.

A Yes, I heard Mr. Donnelly call Mr. Samuels and told him to stay away from Thomasville.

Q You heard Mr. Donnelly do this?

A Mr. Donnelly told me that he did it.

Q Did you hear Mr. Donnelly telling Mr. Samuels?

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A No, sir, I did not.

Q Did you hear it on any other occasions?

A Not that I recall.

Q When did Mr. Donnelly tell you that he had told that to Mr. Samuels?

A Following the time when he and I talked, and I told him Mr. Warnock's instructions were for him to do so.

Q That was in January 1967?

A That would be in January of '67.

Q I mean prior to January 1967, had you heard from anyone other than Mr. Binns?

A Not that I recall.

Q Mr. Banzhaf, was the ultimate merger of Thomasville into Armstrong the greatest accomplishment of your career at Armstrong?

THE COURT: What's that?

MR. PENNOYER: Objection.

THE COURT: Sustained.

Q Were you promoted as a result of this merger?

A No, sir.

Q It had nothing to do with your promotion?

A No, sir.

Q I show you what has been received in evidence as Plaintiff's Exhibit 13, and I ask you whether you

received the original of this letter?

A I did.

Q On the original that you received had Mr. Samuels written the postscript such as appears on Exhibit 13?

A No, sir.

Q Did Mr. Donnelly tell you about this postscript that appears at the bottom of theletter?

A He did.

Q Did he tell you that Mr. Samuels had violated his, Donnelly's, instructions about not putting anything in writing about Thomasville?

A No, sir.

Q Did you know that Mr. Samuels and Armstrong had entered into a finder's fee contract?

A Yes, sir.

Q Did you see that contract on August 25?

A I don't recall.

Q Did you read the contract before it was signed by Mr. Donnelly?

A No, I'm sure I didn't.

Q Did you contribute to the wording of the contract--

A No, sir.

Q -- in any way?

A No, sir.

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Q You weren't consulted on that?

A No, sir.

Q Was Mr. Donnelly the person at Armstrong that was in charge of relations with Mr. Samuels, Mr. Samuels' contact?

A Yes.

THE COURT: What's that?

THE WITNESS: Yes.

Q When did you first learn that Thomasville was available for acquisition by Armstrong?

A It would have to be in response to my meeting with Mr. Finch on October 18, 1966 in which I asked him, told him the next move we ought to make is for him to visit us in Lancaster, and he said that he would.

Now, exactly what that date was, I can't tell, but it was subsequent -- between that meeting and his making the visit there on January 4, 5 and 6 of 1967.

Q Were you present today during Mr. Finch's testimony?

A Yes.

Q Do you recall that Mr. Finch said that it wasn't until 1968 that he had told anybody that his company was available for acquisition?

A If that was the date -- whatever it was he said.

I can't remember that. '68?

Q Yes.

A No, '67.

Q '67?

A '67. It would have to be '67.

THE COURT: Your question is suseptible to all sorts of meanings, counsellor, available. Available for discussion, available for merger or what?

However, go on.

Q I show you Exhibit 12.

Have you ever seen this before?

A Yes.

Q When did you see that for the first time?

A It was after it was received, subsequent -- after August 26, 1966, when I got a copy of it.

Q Who gave you a copy?

A Mr. Samuels.

Q Mr. Samuels sent one of these to you; is that right?

A The letter is addressed to three of us. Either I saw the original or a copy came to me. I can't remember which.

Q Did you discuss this with Mr. Donnelly at that time?

A I'm sure I did.

Q Did you tell Mr. Donnelly that you disagreed with Mr. Samuels' appraisal of Morgan?

A I don't think Mr. Samuels ever understood it, what it was we were interested in.

Q Did you tell that to Mr. Donnelly?

A I conveyed that not only to Mr. Donnelly, but to the acquisition evaluation committee.

Q Mr. Warnock?

A No.

Q Mr. Binns?

A Yes.

Q And you told them in substance that you thought that Armstrong ought to acquire Morgan; isn't that right?

A I guess that's right, yes.

Q In any event, Armstrong didn't acquire Morgan?

A That is correct.

MR. LESCH: One moment, your Honor. I'm almost finished.

(Pause.)

Q You recall that you testified today that Mr. Warnock spoke to you in January 1967 and told you that

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Mr. Finch had been contacted by Mr. Samuels?

A Yes, sir.

Q And then Mr. Warnock got very excited, and he said, in substance, keep Mr. Samuels away from Mr. Finch; isn't that right?

A He told me to tell that to Mr. Donnelly, ask Mr. Donnelly to do that.

Q At the same time this letter, Exhibit 14, was sent; was it not?

THE COURT: What is the date on the letter?

THE WITNESS: January 11, 1967.

A I guess it was sent, yes.

Q Did Mr. Donnelly tell you that at the same time that he was communicating to Mr. Samuels what you had told him to communicate, he was also sending this letter, Exhibit 14?

A I don't recall that.

Q You knew at the time, January 11, that this letter was sent, didn't you?

A I knew when that was sent, yes.

Q Didn't you and Mr. Donnelly discuss the sending of this letter as well as his communication to Mr. Samuels?

A I am sure that at some time in that -- about that time we discussed the termination of Mr. Samuels'

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relationship, yes.

Q What you and Mr. Donnelly discussed was that the reason that you wanted toterminate Mr. Samuels was because he had been bothering Mr. Finch; isn't that right?

MR. PENNOYER: Objection.

THE COURT: Sustained.

Q Didn't you and Mr. Donnelly agree in substance that Mr. Donnelly would send this letter, Exhibit 14, because Mr. Samuels had contacted Mr. Finch in January 1967?

MR. PENNOYER: Objection.

THE COURT: Sustained.

MR. LESCH: As to form, your Honor? This is one of our contentions at this trial.

THE COURT: It's irrelevant.

MR. LESCH: It's crucial to our case, your Honor.

THE COURT: Read the last three questions.

(Record read.)

THE COURT: Why do you say that that question is relevant, counsellor?

MR. LESCH: Because our contention is that this agreement with Mr. Samuels was terminated in bad faith.

THE COURT: What do you say?

MR. PENNOYER: Your Honor, I say that we had a right to terminate the agreement under the contract and --

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THE COURT: Does it go to good faith? That is the issue.

MR. PENNOYER: Your Honor, it's irrelevant because no matter what the purpose or motive of the termination was, if we had a right to terminate, has nothing to do with the case.

THE COURT: I am going to take it.

You may, each one, point out what significance it has, and if it has any significance bearing on the issue of good faith, I will consider it.

Answer the question.

A No.

Q Didn't have that conversation with Mr. Donnelly?

A I don't believe that was the question.

THE COURT: No, it wasn't the question.

Reframe your question if you are going to pursue this any further. He has already answered you that that wasn't stated to be the reason, in substance.

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jqsg 1 Banzhaf-cross [300]

Q Did you and Mr. Donnelly discuss the reason for sending the Exhibit 14?

A We may have.

Q Did Mr. Donnelly tell you that he was going to send Exhibit 14 to prevent Mr. Samuels from communicating with Mr. Finch anymore?

A No.

Q But that was the reason that he talked to Mr. Samuels, wasn't it?

THE COURT: Wait a minute.

MR. PENNOYER: Objection.

THE COURT: Sustained. He can't tell what the reason was.

Q Mr. Warnock had told you in substance that you should tell Mr. Donnelly to tell Mr. Samuels to stay away from Mr. Finch, isn't that right?

A That is correct.

Q And you told Mr. Donnelly to do that, didn't you?

A Yes, sir.

Q And at the same time that he told him to stay away from Mr. Finch he also wrote this letter Exhibit 14 in evidence, didn't he?

A I am not sure that was at the same time.

Q It was on January 11, wasn't it?

A Yes.

THE COURT: What is this?

Q Exhibit 14 was sent on January 11, was it not?

A It was dated January 11.

Q Do you know that it was sent on January 11?

A I didn't mail it.

Q Are you now saying that it was sent on a day other than January 11?

A No.

MR. PENNOYER: Objection.

THE COURT: Sustained. He doesn't know whether it was sent.

Q Did you testify earlier this afternoon that the date of your conversation with Mr. Donnelly after your conversation with Mr. Warnock was on January 11, 13 or 14? Isn't that what you testified to this afternoon?

A About that time.

MR. LESCH: I havenothing further.

THE COURT: Any redirect, counsellor?

MR. PENNOYER: No, your Honor.

THE COURT: You are excused.

(Witness excused.)

THE COURT: Next witness.

Mr. Lesch, did Mr. Berman come in?

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MR. LESCH: I haven't asked Mr. Berman to come because Mr. Pennoyer said he wants to get through with all the witnesses that came in from Pennsylvania.

THE COURT: All right. Who is this next witness?

MR. PENNOYER: Mr. Donnelly, your Honor.

F R E D E R I C K D. D O N N E L L Y , J R .,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PENNOYER:

Q What is your title with the Armstrong Cork Company as of today?

A I am vice president and general manager of international operations.

Q And as of 1966 and 1967 what was your title?

A I was treasurer.

Q Did you serve on the Armstrong acquisition committee in 1966?

A Yes.

Q That was headed by whom?

A Mr. Binns.

THE COURT: Who?

THE WITNESS: Mr. Binns.

THE COURT: Who else was on that committee?

THE WITNESS: Mr. Banzhaf was on the committee, Mr. Ellis, Mr. Ford, and several other officers of the company.

THE COURT: All right.

Q Was there a furniture subcommittee within the overall committee?

A Yes, there was.

Q Who headed the furniture subcommittee?

A Mr. Banzhaf.

Q Were you on that?

A Yes, I was.

Q When did you first meet Mr. Samuels?

A The first meeting with Mr. Samuels, I believe, was in Lancaster on January 10, 1966.

Q That is when you met him?

A Did I say January -- August 10, 1966.

THE COURT: All right.

A That is the first time I met Mr. Samuels.

Q Did you have any talks with Mr. Samuels on August 10, 1966?

A Yes, I did.

Q Who was present besides yourself and Mr. Samuels?

A I spent some time with Mr. Samuels alone on the

10th. I also spent some time with Mr. Samuels and Mr. Warnock, Mr. Binns, I believe Mr. Painter, and possibly Mr. Banzhaf, I don't recall. I am not sure Mr. Banzhaf was there.

Q Do you recall your discussions with Mr. Samuels on that day?

A Generally, yes.

Q Generally what were they? What did he say and what did you say?

A Generally I told Mr. Samuels that the Armstrong Cork Company was interested in acquisitions in a number of areas; that we were considering the possibility of working with a finder and we would like to discuss that possibility with him and his qualifications.

Q What did he say?

A He at some length discussed with me some of his experiences in this business and indicated an interest in working with Armstrong.

Q Did you discuss any specific prospects that day?

A No, we did not discuss prospects.

Q How long did your conversation with Mr. Samuels last that day?

A I don't recall the exact length of time.

Q Did you have anything to do with meeting him or

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taking him around and introducing him to the people you named?

A Yes.

Q You were the one who did that that day?

A Yes.

Q Was anything else, to your recollection, said between you and Mr. Samuels that day?

THE COURT: Of any substance.

Q In substance.

A During that meeting we discussed the type of arrangement that might be possible between him and our company. He indicated that a formal contract would not be necessary. I suggested that we would prefer one. I asked him if he would submit a contract to us at a later date assuming we decided to engage his services. He agreed to do that.

Q Did he subsequently do that?

A Yes, he did.

THE COURT: Do we have the original?

MR. PENNOYER: We are looking for Plaintiff's 11 and 11A.

MR. LESCH: The contract is Exhibit A and here are 11 and 11A, the letter and the draft.

THE COURT: That is the letter and the

enclosed draft, isn't it?

MR. LESCH: Yes, your Honor.

THE COURT: Do you want the contract?

MR. PENNOYER: I want to establish that this is the draft contract subsequently sent to Mr. Samuels.

Q Showing you Plaintiff's Exhibit 11 and 11A, Mr. Donnelly, is that the draft contract with the letter enclosing it from Mr. Samuels?

A Yes.

Q Did that come subsequently after your meeting of the 10th of August of 1966?

A Yes, sir.

Q What was your next meeting with Mr. Samuels?

A I believe the second meeting with Mr. Samuels was on the 25th of August.

Q On that occasion did you squire Mr. Samuels around the plant again?

A Yes, I met him.

Q Did you have conversations with him on that day?

A Yes, I did.

Q Will you now tell us what you said, what he said on that day?

A It's my recollection that day that we discussed

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the contract which we had amended somewhat. We reviewed that contract with Mr. Samuels. As I recall, it was signed by him that day and by us.

THE COURT: Who drew the contract which was signed?

THE WITNESS: The original contract draft was submitted by Mr. Samuels.

THE COURT: That is 11A?

THE WITNESS: Right.

THE COURT: Who drew the contract which was signed? Will you give me the number of that?

MR. LESCH: Exhibit A.

THE COURT: Look at it and see.

THE WITNESS: That contract was prepared by Armstrong. It was from the draft and it changed.

THE COURT: Was it prepared from your attorney or prepared by officers?

THE WITNESS: Prepared by our attorneys, our legal department in Lancaster.

THE COURT: All right.

Q Have you concluded your answer with respect to conversations that day with Mr. Samuels?

A Well, a good part of our discussions on the August 25 date were concerned with the Morgan Manufacturing

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proposal.

Q What did you say to Mr. Samuels and what did he say to you in regard to that proposal?

A Mr. Banzhaf joined me and we discussed our expiration of the Morgan Manufacturing acquisition possibility in some detail. We gave Mr. Samuels a copy of the report that had been prepared. He examined it at some length for an hour or so and came back and gave us his evaluation.

THE COURT: Who was this?

THE WITNESS: Mr. Samuels.

THE COURT: You say he took this contract, Exhibit A of the defendants, away?

THE WITNESS: We are talking about the Morgan Manufacturing.

THE COURT: Simply that?

THE WITNESS: Yes.

THE COURT: What did he take away?

THE WITNESS: That is what he took away and examined.

THE COURT: The report about Morgan?

THE WITNESS: Yes.

THE COURT: All right.

Q And you say he came back and gave you his report

and what did he say? What was his report?

A His report was very negative. He felt very strongly that this was a bad deal.

Q Anything else?

A He expressed his thoughts in very strong language.

Q Can you recall any of the language now, today?

A Not the precise words.

THE COURT: Did he say anything about Thomasville at that time?

THE WITNESS: No, sir, he did not.

THE COURT: Did you?

THE WITNESS: No, sir.

Q What, if anything, further was said that day between you and Mr. Samuels?

A I asked Mr. Samuels if he would give us a written summary of the comments that he made. I might add that I particularly asked him to be as objective as possible in that report.

Q Was that the word you used "objective"?

A I believe it was.

THE COURT: Was this the Morgan Report or what?

THE WITNESS: Yes, sir.

apm

Q I would like to read to you, Mr. Donnelly, a portion of the testimony of Mr. Samuels given here yesterday in court.

MR. LESCH: I object to this.

THE COURT: If it is a part of a question, although it may be along winded affair, I don't see anything wrong in it.

Overruled.

What page?

MR. PENNOYER: Page 43.

THE COURT: It is probably the most direct thing to do.

Q At line 10.

"Question. Tell us what was said prior to your actually signing the agreement.

"Answer. Nothing was said prior.

"Question. What was said after the agreement?

"Answer. Fred Donnely said now that you have our agreement and we have your agreement let's start talking and doing.

"Question. What else did he say?

"Answer. He said but first and foremost you most do me a favor. We are having some problems with management with respect to Mr. Banzhaf."

First of all, did you say that to Mr. Samuels?

A No, sir.

Q At any time?

A No, sir.

Q Continuing over to the next page, line 5.

"Answer. He said that Mr. Banzhaf--"

THE COURT: Who is "he" here?

MR. PENNOYER: Donnelly, the witness.

Q "Answer. He said that Mr. Banzhaf was put in charge of mergers and acquisitions by the company and as far as the management is concerned he does not know anything about mergers or acquisitions. He has not done a thing but he is about to close one deal by the name of Morgan Furniture Company. I would like you to look it over. I am handing it to you right now."

Did you say that to Mr. Samuels at any time?

A No, sir.

THE COURT: Did you hand some papers over about Morgan to him at that time?

THE WITNESS: Yes, sir. Mr. Banzhaf was with me at the time.

Q Then going on "What was he handing to you?

"THE WITNESS: A write up on the Morgan Company and he said I want you to dissuade the company from buying

this company without embarrassing Mr. Banzhaf, get up some kind of a letter immediately."

Did you say that to Mr. Samuels on August 25 or at any other time?

A I did not.

Q In words or in substance?

A In words or in substance. I did ask Mr. Samuels to give us a report, an objective report on his finding.

THE COURT: About Morgan?

THE WITNESS: Yes, about Morgan. I made no such comments about Mr. Banzhaf's incompetence.

Q What was your next meeting with Mr. Samuels?

A I believe that I met with him for dinner in New York.

Q When?

A About the end of August sometime.

THE COURT: '66?

THE WITNESS: Yes, '66.

I was here on bank business. He called me at the hotel and we had dinner together.

Q Do you remember where the dinner was?

A We had dinner at a restaurant down near Penn Station, I don't remember the name of it. It was a corner restaurant, as I recall.

jqe 4 Donnelly - direct [313]

Q Did you have any discussions about business with Mr.Samuels on that occasion?

A I don't recall any specific discussion that evening.

Q What was your next meeting with Mr. Samuels?

A I believe the next time that I saw him was the Chicago meeting, about October 5, 4th or 5th.

THE COURT: '66?

THE WITNESS: Yes, '66, your Honor.

THE COURT: Please give the year.

Q What were you doing that day in Chicago at that time?

A We had gone to Chicago for two purposes. One was a meeting with Kroehler that Mr. Samuels had arranged. The other was a meeting with the First National Bank of Chicago. Mr. Banzhaf was with me.

Q There is one thing I forgot with respect to Mr. Samuels' testimony as to the discussions on August 25 and I would like to read you one more section of the transcript of that testimony yesterday.

THE COURT: What page?

MR. PENNOYER: 45, your Honor, starting at line 22.

"Question. What else did Mr. Donnelly say at that

jge 5 Donnelly - direct [314]

time, August 25?

A It would seem that Mohasco, Thomasville and Kroehler are very large companies and it is the political policy of our corporation, our corporate directors and officers not to buy anything for stock if it would make the acquiring company a large stockher and probably dictate the policies of the company."

Mr. Donnelly, did you say that to Mr. Samuels on August 25?

A I certainly did not.

Q Or at any other time?

MR. LESCH: There is a correction on the record, the next question and answer, your Honor. I think when Mr. Samuels said the acquiring company, he meant the acquired company, although I don't--

MR. PENNOYER: Assuming we change acquiring to acquired does that change your testimony? Did you ever say that to Mr. Samuels in words or in substance?

THE WITNESS: No, I never made any statement to the effect that the Armstrong Cork Company had a policy that prohibited a major stockholder.

Q Did it have such a policy in fact?

A Not to my knowledge.

Q Going over to page 48 of the Samuels transcript,

line 6.

"Question. Was anything more said about Thomasville on August 25?

"Answer. Yes. He said that since--

"THE COURT: Who said?

"THE WITNESS: Donnelly said since the policy is that we don't acquire a company where there are large blocks of stock issued I don't think that Mohasco or Thomasville or Kroehler should be gone into. But you can follow them up anyway. Follow them up and keep me advised as to what is available and how the deal can be done if it can be done."

Did you say any such thing in words or in substance to Mr. Samuels on August 25?

A I certainly did not.

Q Or at any other time?

A At any other time I did not. To the best of my knowledge Kroehler had never been mentioned at that point. Thomasville was mentioned in our earlier meeting on the 10th this being an example of the type of company that we were interested in. It is my believe that at that August 10 meeting it was made very plain to Mr. Samuels that he was to have no part in any investigation of Thomasville.

MR. LESCH: I move to strike everything in that

answer as not responsive to the question.

THE COURT: Read the question and the answer.

(Question and answer read.)

THE COURT: Strike out from Kroehler and whatever follows. You may ask him if there is a suitable question about it.

Q Mr. Donnelly, at any time did you ever request Mr. Samuels to find out if Thomasville was available? At any time?

A I did at no time. In fact, Mr. Samuels--

MR. LESCH: I move to strike out--

THE COURT: You have answered the question already.

Q Did you tell him at any time not to do anything about Thomasville, to stay away from it?

A Not prior to the first week in January. I never felt it was necessary. I believe he knew that from our earlier discussions.

Q Did you ever ask Mr. Samuels to do anything regarding Thomasville?

A No.

THE COURT: Did he ever report to you anything about Thomasville?

THE WITNESS: He occasionally asked me questions about it, your Honor. He knew we were interested about

Thomasville. I can recall no substantive report from him on the subject.

THE COURT: He never reported to you whether or not he had approached Thomasville?

THEWITNESS: I had no knowledge of his--

THE COURT: I didn't ask you that. Did he ever report to you--

THE WITNESS: No, he did not.

THE COURT: Did he ever report to you anything about Thomasville?

THE WITNESS: He asked me questions occasionally about our investigation of Thomasville. I seem to remember on one or two occasions he offered us some advice which consisted of telling us that he thought our interest in Thomasville was ill-advised.

THE COURT: But you say that he never reported to you that he had gone to Thomasville and discussed any proposed merger of Armstrong and Thomasville?

THE WITNESS: No, sir, he certainly did not.

Q I show you Plaintiff's Exhibit 13, Mr. Donnelly, that is the letter of October 10, 1966 from Mr. Samuels to Mr. Banzhaf, a copy to you, with the handwritten note to you on the bottom.

I ask you if that is the kind of advice you received

from Mr. Samuels during that period?

MR. LESCH: Objection.

THE COURT: Sustained as to form.

Q What did you understand that footnote to mean, Mr. Donnelly?

A I interpreted this as another example of his opinion that Thomasville was not a satisfactory acquisition for Armstrong.

Q After your New York dinner with Mr. Samuels--

THE COURT: What date was this?

MR. PENNOYER: I believe he said--well, when was that?

THE WITNESS: Late August.

Q Of 1966?

THE COURT: This is the one in some restaurant down near Penn Station?

THE WITNESS: Yes, sir.

Q What was your next meeting with Mr. Samuels? Was that in Chicago?

A That was the Chicago meeting, I believe, on October 4or 5, 1966.

THE COURT: I believe you discussed that, haven't you?

THE WITNESS: Yes, I have.

jqe 10 Donnelly - direct [319]

THE COURT: All right, go ahead.

MR. PENNOYER: I am trying to, your Honor. I forgot I was that far ahead.

Q Was Mr. Banzhaf with you on that trip?

A Yes.

Q Mr. Samuels was with you also?

A At the Kroehler portion and that evening he was.

Q Did you have dinner that evening after visiting Kroehler with Mr. Samuels?

A Yes, I believe so.

Q What was the discussion with him that evening?

A I think most of the discussion was about our visit at Kroehler and we talked about the advantages and disadvantages of Armstrong becoming interested in Kroehler.

I believe also that evening I mentioned to Mr. Samuels that I had arranged two bank visits, one the next day in Chicago and one several weeks later in Winston-Salem at Wachovia with banks that were particularly interested and adept in the furniture area.

I think it likely that I also mentioned to Mr. Samuels that we expected to see Mr. Finch in Wachovia on that October 18 meeting.

Q Of 1966?

A Yes, 1966.

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jqe 11 Donnelly - direct [320]

Q Following that meeting with Mr. Samuels when was your next meeting with him?

A Following the Chicago meeting?

Q Right. I am speaking now of face to face meetings.

A I don't believe I had any other face to face meetings with him following the Chicago meeting.

Q You attended the meeting at the Wachovia Bank on October 18, 1966?

A Yes, I did.

Q Did you meet Mr. Finch on that occasion?

A Yes, I did.

Q Was that the first time you met Mr. Finch?

A Yes, sir, it was.

Q Who was with you besides Mr. Finch?

A Mr. Banzhaf and Mr. Ellis, both of our company.

Q Will you tell the Court who said what in the course of your group meeting with Mr. Finch?

A Almost all of the talking was done by Mr. Banzhaf. He presented a very strong case for Armstrong's interest in acquiring Thomasville. He discussed in some detail the reasons why we felt a merger would be to both our company's best interests.

Q What was Mr. Finch's response briefly?

A Briefly, my recollection of Mr. Finch's response

was that he felt that it was a very thought provoking suggestion, that it deserved serious consideration and that he had a responsibility to his stockholders to treat it in that fashion and he would consider it and be in touch with us later.

Q Following that meeting when was your next meeting with Thomasville representatives, yourself?

A The next time I saw anyone from Thomasville was on January 4, 5 and 6, 1967.

Q Is that the occasion when the Thomasville people came to Armstrong's plant in Lancaster?

A Yes, it was.

Q Did you meet with Mr. Finch during the course of that three-day visit by them?

A I was with Mr. Finch during that visit for two dinners and one lunch.

Q During the course of any of those meals was the question of possible affiliation with Armstrong discussed?

A That was the total subject of the meeting and it was discussed by everyone involved at the meals that I attended.

Q Can you recall any particular one now where Mr. Warnock discussed it?

A No, I don't recall a specific discussion. The

parts of the meeting with Mr. Finch that I attended were, as I said, two dinners and a lunch, as I recall, and the discussions at those meetings were general. I did spend some time with Mr. Doherty who was the treasurer of Thomasville and a part of that group during that visit but not with Mr. Finch.

Q Mr. Donnelly, at any time did you request or instruct or ask Mr. Samuels not to put the name Thomasville in any communications in writing between you?

A I did not.

Q Did you ask him not to put the name Finch in any communication in writing?

A I certainly did not.

Q Between your August 25, 1966 meeting with Samuels, Mr. Samuels, and the Lancaster meeting with Thomasville people in January 4, 5, and 6 of 1967, did you have telephone conversations with Mr. Samuels?

A Very little.

Q Can you give us a rough approximation on the frequency of those conversations?

A Oh, several weeks.

Q Generally, what were the subjects?

A Generally the subjects were the companies that he had suggested that we might be interested in. There were,

as I recall, 50 or so.

THE COURT: Was Thomasville mentioned?

THE WITNESS: No, sir. Thomasville was not proposed by Mr. Samuels.

end 5b

6a

gawe 1 Donnelly - direct [323]

Q At any time in the course of these phone conversations, did you ask Mr. Samuels to do anything about Thomasville?

A No, sir, I did not.

Q Did you ask him for advice by Thomasville?

A No, I have no recollection of asking him for any advice.

Q Following--

A I did get some advice from him occasionally. I would like to be very precise on this point.

There were some times when Thomasville was mentioned in my phone conversation with Mr. Samuels. We were acting with him in good faith. It was my understanding that he had nothing to do with Thomasville, but he knew we were interested in--

MR. LESCH: I object to what--

THE COURT: Strike out about what he knew and so forth.

THE WITNESS: The point I wanted to make, your Honor--

THE COURT: You better await the question.

Q Mr. Donnelly, following the meeting with the Thomasville people 4, 5 and 6 January, 1967, in Lancaster, did you receive any calls from Mr. Banzhaf or speak to

Mr. Banzhaf about Mr. Samuels?

A Yes. The first occasion after that Thomasville meeting on 4, 5 and 6 was about the middle of the following weak when Mr. Banzhaf saw me in my office, told me of Mr. Samuels' discussion with Mr. Finch in Chicago, relayed Mr. Warnock's specific direction to remind Mr. Samuels of the agreement to stay away from Thomasville.

Q Did you thereafter call Mr. Samuels?

A Yes, I did.

Q What did you tell him?

A I told him that--I reminded him of our understanding that Thomasville was not--

MR. LESCH: I object to reminded him.

THE COURT: Yes, you will have to strike that. You will have to state the substance of what you said. You were reminded is not a word of art in the courts.

A (Continuing) The substance of what I said to Mr. Samuels was: We have instructed you--we instructed you at our first meeting that Thomasville was not to be a part of our activity. I understand that you talked to Mr. Finch in Chicago, and I am instructing you again to stay away from Mr. Finch and stay out of anything having to do with Thomasville.

Q Following that phone conversation with Mr. Samuels,

gawe 3 Donnelly - direct [325]

did you have any further meetings with him at any time?

A No.

Q Did you send the termination letter, which is now--

A That is the one that is dated January 11.

Q I show you Plaintiff's Exhibit 14 and ask you did you prepare and send that letter?

A Yes, I did.

Q To Mr. Samuels?

A Yes, I did.

Q Did you have any further phone conversations with Mr. Samuels after that one--

THE COURT: After January 11?

MR. PENNOYER: I think he said 12 or 13 or 14.

THE COURT: All right.

A I had the phone conversation referred to in that letter the previous Sunday, which I believe was January the 8. Mr. Samuels had called me at home that evening about one of the other companies that were being considered.

I told him at that time of our decision to terminate the agreement with him.

That is confirmed in the letter of termination which was then written on the 11th.

Q On Sunday, January the 8, or by Sunday, January

gawe 4 Donnelly - direct [326]

the 8th, had you had this conversation with Mr. Banzhaf about the Samuels talk to Finch in Chicago?

A No. As a matter of fact, I don't believe Samuels had talked to Mr. Finch by that time.

In any event, I didn't hear about it until the latter part of the weak of the 8th, sometime between the 11th and the 13th.

Q Did you yourself participate in any later meeting with any Thomasville representatives?

A No, I did not.

Q Any of the meetings including the one at the Barclay Hotel in Philadelphia in April of 1967?

A No.

Q Did you subsequently after that go back to Thomasville at any time?

A No, I did not. The negotiations with Thomasville were taken over largely by the presidents office beginning in January. I was not involved in any of these additional negotiations.

MR. PENNOYER: Your Honor, I am almost finished. I just want to read one more passage from the transcript of Mr. Samuels' testimony, page 115 and 116.

I am trying to pick up the time sequence, your Honor.

gawe 5 Donnelly - direct [327]

Q Page 114. I start at line 9.

"Question. Were you invited to attend that meeting?"

THE COURT: Referring to what meeting?

MR. PENNOYER: The one at Wachovia Bank on October 18. If I can avoid going back, I think that is correct.

Q "Answer. I asked them--

"THE COURT: No. Will you please answer his question.

"Question. Were you invited to attend that meeting?

"Answer. No.

"Question. In fact, you were told not to attend it, weren't you?

"Answer. I asked him to go to the meeting and they said not this one, maybe the next one."

Did you say such a thing to Mr. Samuels at any time?

A I did not. We never considered the possibility of Mr. Samuels being involved in a meeting with Thomasville.

Q Going on--

THE COURT: Where is this?

MR. PENNOYER: I am continuing with the same thing, page 14, line 17.

gawe 6 Donnelly - direct [328]

"Question. When did he say that?

"Answer. When we discussed this meeting in North Carolina at the bank.

"THE COURT: What time was it when you did discuss that?

"THE WITNESS: About ten or 12 days before I wrote that letter with a postscript on it.

"THE COURT: What date, Mr. Samuels?

"THE WITNESS: I think it was at the end of September, the early part of October.

"THE COURT: What year?

"THE WITNESS: 1966.

"Question. You knew therefore, that Armstrong was going to meet with Finch, and knowing that did you attempt to find out whether the meeting had taken place?

"Answer. Yes, I did.

"Question. And were you told that it had?

"Answer. Yes.

"Question. When were you told that?

"Answer. A few weeks, about a week or ten days after the meeting."

Do you recall, Mr. Donnelly, telling Mr. Samuels that the Wachovia Bank meeting--

THE COURT: Wait. You better read the next ques-

tion, page 116.

MR. PENNOYER: All right, your Honor.

Q "Question. Who told you that?

"Answer. Mr. Donnelly.

"Question. Where was he when he said it?

"Answer. On the phone.

"Question. Where were you?

"Answer. In my office.

"Question. What did he say about it?

"Answer. He said you pursue it on your own. It doesn't look to me as though they want to make any deal. He said find out definitely whether they are available for a deal, for a merger."

Did you ask Mr. Samuels to find out whether Thomasville was available for a deal or a merger at any time?

A No, I did not.

THE COURT: Or anything to its equivalent?

THE WITNESS: No, sir.

Q Did you inform Mr. Samuels that the Wachovia Bank meeting had taken place?

A You will recall I told him in Chicago that the meeting had been scheduled. My recollection is that at a later telephone conversation he asked me about it, and I

gawe 8 Donnelly - direct cross [330]

told him that it had taken place.

MR. PENNOYER: If I may just have a minute.

(Pause.)

MR. PENNOYER: No further questions.

THE COURT: Cross.

xx CROSS EXAMINATION

BY MR. LESCH:

Q How did you first hear of Mr. Samuels?

A I didn't hear you.

Q How did you first hear of Mr. Samuels?

A I heard first of Mr. Samuels from--as a result of a discussion here in New York at the First National City Bank.

Q With Mr. Schmidt?

A I believe it was Mr. Schmidt.

THE COURT: Mr. who?

THE WITNESS: Schmidt.

THE COURT: Who is he?

THE WITNESS: He was one of the bank officials, your Honor.

Q Mr. Schmidt recommended Mr. Samuels to you very highly, did he?

A In essence, he did, yes.

Q You also made other investigations of Mr. Samuels,

gawe 9 Donnelly - cross [331]

didn't you?

THE COURT: I don't know what relevance this has.

Q At the first meeting on August 10, 1966, was Thomasville mentioned?

A I believe it was.

Q Wasn't it said by either you or Mr. Donnelly that you felt that--

A I am Mr. Donnelly.

Q Excuse me, you or Mr. Banzhaf.

Wasn't it said either by you or Mr. Banzhaf that you thought that Thomasville was the company that would best fit with Armstrong?

A I am not sure Mr. Banzhaf was at that meeting. I believe that Thomasville was mentioned during our general discussions in which Mr. Binns, Mr. Warnock and Mr. Painter participated, during which Thomasville was mentioned as being an example of the type of company that we had been investigating and were interested in.

Q Wasn't it said that Thomasville was the best fit for Armstrong?

A I'm not sure we knew that, but I think we thought it might be at that point. In any event, we were investigating.

THE COURT: Did you say that or in substance?

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gawe 10 Donnelly - cross [332]

THE WITNESS: I did not say that.

THE COURT: Did anybody from Armstrong say that at that time?

THE WITNESS: Would you repeat exactly what it is again?

Q Did anybody from Armstrong say that Thomasville was the best fit for Armstrong?

A I'm going to answer your question literally. No. Somebody did say that Thomasville appeared to be the best fit at that point in our investigation.

Q Who said that?

A I don't recall whether that was said by Mr. Warnock or Mr. Binns or Mr. Painter.

Q Wasn't the substance of your meeting with Mr. Samuels at that time for him to give you advice on acquisitions in the furniture field.

A Among other fields.

Q Is it your testimony today that someone told Mr. Samuels at the August 10 meeting that he should stay away from Thomasville?

A That's my belief, yes.

Q Is that what your recollection is?

A Yes, it is.

Q Were you examined in this case on November 23,

1971 at Lancaster, Pennsylvania?

A Yes, I was.

Q Who was it that said that Mr. Samuels was to stay away from Thomasville?

A I don't recall.

Q Was it either Mr.Binns or Mr. Banzhaf?

A I don't believe that Mr. Banzhaf was at that meeting.

Q Was it Mr. Binns?

A If somebody said it, and it is my recollection that somebody did, it would have had to have been either me--and I did not say it--Mr. Painter, Mr. Warnock or Mr. Binns.

Q Let me see if I can refresh your recollection. This is page 15, line 17.

Do you recall being asked this question and giving this answer:

"Question. Did either Mr. Binns or Mr. Banzhaf indicate to you prior to August 10 that if you were going to use Mr. Samuels as a broker or finder in the furniture industry, you would not want him involved with Thomasville?

"Answer. This is prior to August 10th?

"Question. Yes.

"Answer. I have no specific recollection of us being that detailed in how we wanted to work with Mr. Samuels

gawe 12 Donnelly - cross [334]

at that point. I think it is possible, but I don't recall it."

Were those answers true?

MR. PENNOYER: Objection. It is not contradictory, your Honor, of anything in the record. The question--

THE COURT: Why isn't it contradictory?

MR. PENNOYER: It related previously to a meeting of August 10. This is now talking about prior to August 10.

THE COURT: That seems to be so.

Sustained.

Q Let me go on with these questions and answers at page 16.

"Question. I take it at this time you do not have any specific recollection that Mr. Samuels mentioned Thomasville to you on August 10 or that you mentioned Thomasville to Mr. Samuels on August 10?

"Answer. I think it is probable that we mentioned Thomasville. I have no recollection of his mentioning Thomasville.

"Question. Do you have any recollection as to what you told him about Thomasville on August 10?

"Answer. I don't have any specific recollection.

"I can speculate."

gawe 13 Donnelly - cross [335]

Do you now have any specific recollection of what you told Mr. Samuels on August 10?

MR. PENNOYER: Objection, your Honor.

THE COURT: What's wrong with that?

MR. PENNOYER: He has testified that he didn't himself speak about Thomasville, it was the others, one of the others.

THE COURT: This doesn't call upon him to say what he said.

MR. PENNOYER: The question put is what you told him about Thomasville.

MR. LESCH: I am just now asking this witness--

THE COURT: Question on line 7:

"Question. Do you have any recollection as to what you told him about Thomasville on August 10?

"Answer. I don't have an y specific recollection. I can speculate."

What is your question?

MR. LESCH: My question is: Does he now have any recollection as to what he said about Thomasville on August 10.

THE COURT: I will allow it.

A I have no recollection of my having said anything specific to Mr. Samuels about Thomasville on August the 10th.

Q On August the 10th you had no knowledge whether anyone at Armstrong knew that Thomasville was available for acquisition, isn't that correct?

A I had no knowledge that Thomasville was available for acquisition, no.

Q On August 25 you discussed the Morgan Manufacturing Company with Mr. Samuels, is that correct?

THE COURT: Yes, quite extensively, apparently.

A That is correct.

THE COURT: Is that so?

THE WITNESS: That is so.

Q At that meeting on August 25 did you tell Mr. Samuels in substance that you were not in favor of this acquisition, the Morgan Company?

A No, I did not tell him that. I think I told him that I had some questions about it.

Q Were you in favor of it on August 25?

THE COURT: What difference does it make?

A At that point I didn't have an opinion. It is one of the reasons Mr. Samuels was in here.

Q After Mr. Samuels gave you his recommendation that Morgan shouldn't be acquired, that recommendation was followed, was it not?

A Yes, it was. That was the course of action that

resulted.

Q Yes. That was over the opposition of Mr. Banzhaf, isn't that true?

A I don't recall Mr. Banzhaf being opposed to aborning that acquisition. He may have been, but I don't remember.

Q Wasn't Mr. Banzhaf the principal proponent of that acquisition?

A There must have been a dozen people that were involved in that investigation, including me. I had been down there with Mr. Banzhof.

THE COURT: All right. You have gone far enough on that score I think.

Q I show you Exhibit 13 in evidence, Mr. Donnelly.

Did there come a time when you learned that the copy of this letter or the original of this letter that was sent to Mr. Banzhaf did not have the postscript that Mr. Samuels wrote on there?

THE COURT: Which is on Exhibit--

MR. LESCH: Which is on Exhibit 13.

A Would you repeat that, please?

Q Did there come a time when you learned that the original of Exhibit 13, the letters that was sent to Mr. Banzhaf, did not have the handwritten postscript that

gawe 16 Donnelly - cross [338]

appears on Exhibit 13?

A I don't remember there coming a time. I would have assumed that from the fact that it is "Dear Fred" and handwritten.

Q Did you receive any other written communications from Mr. Samuels about Tom Finch or Thomasville?

A Well, no handwritten letters. It seems to me there was another handwritten note on a copy of another letter.

MR. LESCH: May we have that letter produced?

MR. KEIHNER: We have no record of any such letter, your Honor.

THE WITNESS: Maybe this is the one. I thought there was another note with some advice on not continuing our investigation of Thomasville. Is that part of the letter itself?

Q You say that you did have certain discussions with Mr. Samuels about Thomasville, isn't that right?

THE COURT: What's that?

Q I say, you say you did have certain discussions with Mr. Samuels about Thomasville in the fall of 1966?

A Yes, there were a few.

Q In those discussions didn't you say to Mr. Samuels--

gawe 16a Donnelly - cross [338a]

THE COURT: Make that affirmative instead of a negative. You get into trouble.

Restate it.

end 6a

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6b/1

gwsg 1 Donnelly-cross

Q In those discussions did you say to Mr. Samuels that Thomasville was the least likely of all the deals?

A I never said that.

Q Did you tell Mr. Samuels that it was your policy or the policy of Armstrong not to sell a great deal of Armstrong Cork to one purchaser because you didn't want one person to get control of Armstrong?

A No, I never said that.

Q You never said anything like that?

A I don't recall saying anything like that. Mr. Finch's less than four per cent holdings of Armstrong hardly represent a control problem.

Q Didn't you say to him at one timeor another that this Thomasville deal was, in your opinion, the least likely of the deals?

A I never said that. I always felt that Thomasville was by far the most attractive furniture company for Armstrong.

Q I am not asking you whether it was attractive.

Didn't you tell him you thought it was unlikely it would come to pass?

A There may have been a time when my hopes weren't high. I never said anything to the effect that I thought it was the least likely of all the possible deals. We had

[340]

gwsg 2] Donnelly-cross

our ups and downs with Thomasville.

Q Did you tell him in the fall of 1966 that you thought it was unlikely that Thomasville would be acquired?

A I don't recall having said that. I will say there were some times when I thought the chances weren't very good.

Q And then didn't Mr. Samuels tell you on those occasions in the fall of 1966 that Thomasville could be acquired, that it was available for acquisition?

A No, he did not.

Q Didn't he tell you that he had spoken to Mr. Futurian about that.

THE COURT: Who is Futurian again?

MR. LESCH: Mr. Futurian is an executive in the furniture industry.

THE COURT: I don't see the purport or the validity of this question. Suppose he had? I don't see that there's any relevance in this question.

Q Had Mr. Samuels offered to set up a meeting between Armstrong personnel and Mr. Finch?

A Nd, he had not.

Q In 1966?

A No, he had not.

Q You have no recollection of such a suggestion by

[34]

gwsg 3 Donnelly-cross

Mr. Samuels?

A No. I had set a meeting up as early as --

THE COURT: When did you set up a meeting?

THE WITNESS: I arranged the Wachovia meeting, your Honor.

THE COURT: When?

THE WITNESS: That meeting as I recall was October the 18th. That meeting was set up -- it must have been set up around sometime the 1st of October.

Q Wasn't it Mr. Banzhaf that arranged that meeting at Wachovia?

A No. I was the treasurer of the company and I set up that meeting with the bank.

Q By the way, were you Mr. Banzhaf's superior in the chain of command --

A No, sir.

Q The treasurer?

A No. I was not his superior, nor was he mine.

Q After he was staff vice president, did he subsequently become treasurer?

A Vice president and treasurer.

Q And the position that you had occupied was treasurer?

A Correct.

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gwsg 4 Donnelly-cross

Q Were you also vice president --

A No, I was not.

Q -- when you were treasurer?

A No, I was not.

THE COURT: To what point were you the treasurer?

THE WITNESS: I was treasurer two years, your Honor, from February of '66 until January of '68.

Q Had Mr. Binns or Mr. Warnock ever asked you to make certain that Samuels would not become involved with the Thomasville situation?

A Mr. Warnock did the second week in January 1967.

Q Prior to that had he ever asked you to do that?

A Had ever asked me to make certain that Mr. Samuels -- no.

Q Had Mr. Binns ever asked you to make certain that Mr. Samuels not become involved in the Thomasville situation?

A No, there was never any --

THE COURT: All right, the answer is no.

Q On January 4, 5, and 6 you participated in the meeting with --

[343]

gwsg 5 Donnelly-cross

THE COURT: '67?

MR. LESCH: '67.

Q -- Mr. Finch in Lancaster, Pennsylvania; is that correct?

A That's correct. Not in a meeting, but I was --

THE COURT: You were there?

THE WITNESS: I was there, that's right.

Q You were there.

Shortly after that you learned that Mr. Samuels had met Mr. Finch in Chicago; is that correct?

A That's correct.

Q And then Mr. Banzhaf told you in substance to make certain that Samuels not involve himself with Mr. Finch or the Thomasville situation; is that right?

A That's correct.

Q And then you told that to Mr. Samuels?

A That's correct.

THE COURT: Speak up.

A (Continuing) Yes, I did.

Q At the same time that you told that to Mr. Samuels, you wrote Mr. Samuels a letter terminating the contract; is that correct?

A The letter was written prior to any knowledge that Mr. Samuels had seen Mr. Finch in Chicago

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gwsg 6 Donnelly-cross

on my part.

Q It was just a coincidence that the letter was dated January 11; is that right?

MR. PENNOYER: Objection.

THE COURT: I don't know what that means.

Sustained.

Q Regardless of when the letter was originally written, by the time that it was sent on January 11, 1967, you had spoken to Mr. Samuels pursuant to Mr. Warnock's instructions, hadn't you?

A Not true. May I call your attention to the fact that the letter confirms the telephone conversation that took place on January 8th.

THE COURT: Yes, I think he testified here about that.

THE WITNESS: Yes.

Q Yes, that is correct.

A As I understand it, Mr. Samuels did not even see Mr. Finch until Monday or Tuesday of that week, the 9th or 10th. I didn't learn about that meeting until several days after that.

THE COURT: All right.

Any other questions, counsellor?

MR. LESCH: Yes, your Honor.

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gwsg 7 Donnelly-cross

Q If Mr. Finch had testified that he went directly from his meeting with you to Chicago and then met Mr. Samuels on either the 7th or the 8th, would that change your testimony?

A No, it wouldn't change my testimony.

Q It wouldn't change your recollection at all?

A Not at all. The two events were completely separate.

THE COURT: Have you any more witnesses, Mr. Pennoyer?

MR. PENNOYER: Yes, your Honor. I have Mr. Warnock here.

MR. LESCH: Mr. Berman is here also at this time, your Honor.

THE COURT: How long is Mr. Berman going to be?

MR. LESCH: About five minutes, your Honor.

THE COURT: Suppose we have Mr. Berman and then we will recess and adjourn until tomorrow.

Are you through?

MR. LESCH: I have a few more questions, your Honor.

Q You knew, did you not, sir, that the contract between Armstrong and Samuels provided that if any particular company were to be excluded from the agreement, that Armstrong would notify Mr. Samuels in writing?

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gwsg 8 Donnelly-cross

A If he proposed it.

MR. PENNOYER: Objection. In writing, your Honor, is not in there.

THE COURT: You make an objection. You say the contract is not properly quoted?

MR. PENNOYER: No, your Honor. There's a misquotation of the contract in the question.

THE COURT: You will have to get out the contract in order to ask the question then.

MR. LESCH: I stand corrected.

THE COURT: All right, question withdrawn then.

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gwsg 9 Donnelly-cross

Q Did you know that the contract provided as follows:

"In the event you submit a possible acquisition which has theretofore been considered by us, even though no negotiations with respect thereto had taken place, and irrespective of the source thereof (suppliers, customers, bankers, employees, outside directors, other brokers or any other source) we will advise you promptly of that fact and thereafter you will refrain from working on our behalf on that deal."

THE COURT: What is the question?

Q Was it your practice that when you learned of such a company, you would advise Mr. Samuels in writing.

MR. PENNOYER: Objection, your Honor.

THE COURT: What is the objection?

MR. PENNOYER: The wording is when Mr. Samuels submits the company.

THE COURT: That seems to be correct, counsellor.

MR. LESCH: I think --

THE COURT: Let me see the contract.

MR. LESCH: There's no question that the contract says that. I don't have to ask that question.

THE COURT: Which number is it?

MR. PENNOYER: Number 4, your Honor.

(Pause.)

THE COURT: Read the question, Mr. Reporter.

(Question read.)

THE COURT: Objection?

MR. PENNOYER: Yes, sir.

THE COURT: What is there that requires that?

MR. LESCH: I read the portion of the contract which is paragraph 4, and I asked the witness whether it was his practice when he learned of such a company to notify Mr. Samuels in writing.

THE COURT: That isn't the way I read it. It says, "In the event you submit a possible acquisition, which has theretofore."

Was there any acquisition submitted to you by Mr. Samuels with respect to Thomasville?

THE WITNESS: No, sir.

THE COURT: I don't know how you can ask him this. Objection sustained at this point.

Q Did Mr. Samuels ever submit any acquisitions to Armstrong, to your knowledge --

A Recommendations, yes.

Q -- as to which Armstrong responded that he should not go any further with them?

A Yes, there were some.

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gwsg 11 Donnelly-cross

Q In those instances did Armstrong reply in writing telling Mr. Samuels not to concern himself with those acquisitions?

MR. PENNOYER: Objection.

THE COURT: Sustained. That relates to other items. It has nothing to do with Thomasville.

MR. LESCH: It is our contention that Mr. Samuels did submit Thomasville to Armstrong.

THE COURT: Where is the testimony and what is it?

MR. LESCH: Mr. Samuels has testified --

THE COURT: Where is it in the record? Point it out in the record, the page and line.

Suppose we adjourn until tomorrow at 10 o'clock as to this witness. I will take the lawyer at this time.

MR. LESCH: Thank you, your Honor.

THE COURT: We suspend as to Mr. Donnelly.

(Witness temporarily excused.)

THE COURT: Call the lawyer you have in court.

MR. LESCH: Mr. Berman.

THE COURT: You said it would take only five minutes.

I R A W . B E R M A N , called as a witness on behalf of the plaintiff, after having been first duly sworn, was examined and testified as follows:

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gwsg 12 Berman-direct

THE COURT: Proceed, Mr. Lesch.

DIRECT EXAMINATION

BY MR. LESCH:

Q Mr. Berman, what is your profession?

A I'm an attorney.

Q How long have you been an attorney?

A Since 1955.

Q Do you specialize in any area of law?

A Yes, I specialize in mergers, acquisitions and underwritings.

Q How long have you specialized in that field?

A Since approximately 1960.

Q In the course of your representing clients in the area of mergers and acquisitions, haveyou had occasion to meet and deal with finders?

A Yes, I have.

THE COURT: Are you going to ask him what the law is?

MR. LESCH: No, your Honor.

THE COURT: Go ahead.

Q In connection with your meeting with finders, have you had occasion to learn what the fees normally charged by finders are?

A Well --

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gwsg 13] Berman-direct

THE COURT: Yes or no.

THE WITNESS: I can't answer yes or no, your Honor, for the simple reason there is no such thing as an absolute answer. In every case it's a different situation.

Q Is there a general practice?

A Yes.

THE COURT: How is there a general practice? I don't understand that when you say each one is on its own. YOu just said that, didn't you?

THE WITNESS: They all ask for a particular skill.

THE COURT: That is immaterial, what they ask for and what they get.

THE WITNESS: They get what the people agree to give them.

THE COURT: All right.

What else is there from this witness?

Q How many mergers and acquisitions have you dealt with finders on?

A Oh, I would say between 25 and 35.

Q In the course of those dealings have you compensated or caused companies to compensate finders for merely suggesting acquisitions, whether or not anything

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gwsg 14 Berman-direct

further was done.

MR. PENNOYER: Objection.

THE COURT: Sustained.

Q Is that the practice so far as you know in the merger and acquisition trade?

MR. PENNOYER: Objection.

THE COURT: Sustained.

MR. LESCH: On what ground, your Honor? Relevance?

THE COURT: It is not relevant. He has testified that it's a catch-as-catch-can situation.

MR. LESCH: I am not talking about the rate now, I am just talking about the fact of giving compensation in the event --

THE COURT: Are you asking him whether it's customary to give compensation?

MR. LESCH: Yes, I am.

THE COURT: I don't think you need to ask that. I think the Court can take judicial notice of that.

Q Is it customary to give compensation to a finder even if the only thing the finder does is suggest a possible merger?

THE COURT: That is another thing.

MR. PENNOYER: Objection.

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gwsg 15 Berman-direct

THE COURT: Ask it and we'll see.

A The answer is --

THE COURT: Wait a minute.

Is that the entire question?

MR. LESCH: Yes.

THE COURT: Read the question.

(Question read.)

MR. PENNOYER: Objection, your Honor.

THE COURT: Sustained.

MR. LESCH: May I make an offer of proof on that?

THE COURT: That's one question, I suppose, isn't it?

MR. LESCH: Yes.

THE COURT: I think it's nonsensical, but I will allow it. I don't think it has anything to do with this case.

Go ahead if you want to. The proffer question begins now.

A If --

THE COURT: Wait a minute. It hasn't been asked. Do you answer questions before they are asked? You must be a mind reader.

Q In your experience as an attorney dealing with finders, has it been customary to compensate finders even

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gwsg 16 Berman-direct

if the only thing that they did was suggest a possible merger or acquisition candidate that came to pass?

THE COURT: I am taking it as a proffer only, counsellor.

MR. PENNOYER: I understand.

A Yes.

THE COURT: That is all then.

Tomorrow at 10 o'clock. We will finish up with Mr. Donnelly and you have Mr. Painter.

MR. PENNOYER: I have Mr. Warnock and Mr. Binns.

MR. LESCH: There are two matters, your Honor. I don't know whether Mr. Pennoyer wants cross examination or not.

THE COURT: On this?

MR. PENNOYER: No, I don't.

THE COURT: I take it he doesn't.

MR. LESCH: The other thing is, Mr. Samuels is celebrating a religious holiday tomorrow and Friday --

THE COURT: I can't help that, counsellor. I don't know of anything that precludes his presence here.

MR. LESCH: He has asked me to make that request of the Court, to adjourn this --

THE COURT: I don't know that his presence here is necessary.

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gwsg 17

MR. LESCH: He would like to be present.

THE COURT: I am not passing on it at all. If he is present, all right. If he isn't present, all right.

You are excused.

(Witness excused.)

THE COURT: 10 o'clock tomorrow morning.

(An adjournment was taken until October 11, 1973 at 10:00 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Thomas A. Finch,Jr. (resumed)	204	228	238	
Max Banzhaf	241	276		
Frederick D. Donnelly,Jr.	302	330		
Ira W. Berman	350			

EXHIBIT INDEX

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G		210
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1a jqe [357]

HARRY S. SAMUELS

vs. 69 Civ. 3022

ARMSTRONG CORK COMPANY

October 11, 1973
10 a.m.

(Trial resumed.)

THE COURT: I want to canvas the situation to see where we are.

Have you finished your case, Mr. Lesch?

MR. LESCH: Yes, I have, your Honor.

THE COURT: There were certain exhibits I think about the inventory. Are they here? I haven't seen them. They were 5 through 9 or something like that.

Those relate to inventories?

MR. LESCH: Yes. Starting with number 4, 5, 6, 7, 8 and 9.

THE COURT: Mr. Pennoyer, do you interpose any objection to these exhibits?

MR. PENNOYER: No, I believe they are already in, your Honor.

THE COURT: There was some colloquy about it and I didn't realize what had happened since that colloquy.

What is number 4? I can't read it.

MR. LESCH: Perhaps Mr. Pennoyer has a better

jqe [358]

copy. This is a copy I received from him.

Number 4 is the agreement between Babbitt and Armstrong Cork with respect to the purchase of trademarks and inventory and in that agreement, your Honor, it says--

THE COURT: I am not going to hear it on the basis of that copy.

MR. LESCH: May I ask Mr. Pennoyer whether he has a better copy of this agreement?

THE COURT: I may have to reserve but is there a motion to dismiss as to this Babbitt claim, Mr. Pennoyer?

MR. PENNOYER: Yes, your Honor.

THE COURT: Will you tell us on what you base it and get into these exhibits at least generally.

MR. PENNOYER: Yes, sir.

The motion is based--and may I say that we have two pages of Mr. Samuels' deposition that I would like to read in our case on this matter. Essentially--

THE COURT: I am taking this motion on the plaintiff's case. If you don't want me to pass on it I will reserve and then you put in your defense.

MR. PENNOYER: It would be better to reserve until we have this other matter in.

THE COURT: All right, I will reserve.

I think we are on direct of Mr. Donnelly.

jqe [359]

MR. PENNOYER: On cross of Mr. Donnelly.

MR. LESCH: Your Honor asked me with respect to a question I asked at the close of the day yesterday, what portions of the transcript I cited in support of our contention that Mr. Samuels had submitted Thomasville to Armstrong and I cite the following:

First page 34--

THE COURT: Of the testimony here in court?

MR. LESCH: Yes, starting at line 21. Page 36 at line 7. Page 37 starting at line 22. Page 51 starting at the top of the page and going on to page 52. Page 91.

THE COURT: Is that the next one?

MR. LESCH: Yes.

THE COURT: What line?

MR. LESCH: Starting at line 3. Pages 98 and 99 starting at ine 4 of 98. Page 112--

THE COURT: 99 and what?

MR. LESCH: 98 and 99 starting at line 4 of page 98.

THE COURT: Any others?

MR. LESCH: Page 112 starting at line 22 and page 116 starting at the top of the page and particular at lines 9 through--well, particularly following line 9 of that page.

jqe

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THE COURT: That was which page again?

MR. LESCH: Page 116, your Honor.

THE COURT: 115?

MR. LESCH: Yes.

THE COURT: All right. Continue with your cross examination if that is the order of the day.

xx F R E D E R I C K D O N N E L L Y, resumed.

CROSS EXAMINATION (Continued

BY MR. LESCH:

xx Q Mr. Donnelly, will you read the first sentence of paragraph 4 of Defendant's Exhibit A to yourself.

THE COURT: Only the first sentence?

MR. LESCH: Starting with "in the event" and going to "that deal" on page 2.

THE COURT: Tell us when you have.

THE WITNESS: Yes, sir.

Q Mr. Donnelly, was it your practice in dealing with Mr. Samuels to write him a letter with respect to any possible acquisition submitted by him?

MR. PENNOYER: Objection.

THE COURT: Sustained.

MR. LESCH: I haven't finished the question yet.

Q (continuing)--as to which Armstrong claimed that it had already considered that acquisition?

jqe Donnelly - cross [361]

MR. PENNOYER: Objection, your Honor, the practice is irrelevant.

THE COURT: Sustained.

Q I show you Exhibit 15 for identification and ask you whether you sent this letter to Mr. Samuels?

THE COURT: That is in evidence or is it for identification?

MR. LESCH: Identification.

THE COURT: Didn't I accept that?

MR. LESCH: Your Honor said it was irrelevant and you excluded it.

THE COURT: Why do you try it again then? Go ahead though, I will try to be patient.

Q The question is whether you sent Exhibit 15 for identification to Mr. Samuels?

A Yes, I did.

THE COURT: Is that your signature?

MR. LESCH: It is not a signed copy but the witness did say that he did send it to Mr. Samuels.

THE COURT: What's next?

Q Did you send other letters to Mr. Samuels with respect to other acquisitions that he submitted?

MR. PENNOYER: Objection.

THE COURT: Sustained.

jqe Donnelly - cross redirect 362

Q Did you ever send Mr. Samuels a letter excluding Thomasville from the scope of Defendant's Exhibit A in evidence?

MR. PENNOYER: Objection.

THE COURT: I will allow it.

(Question read.)

A He never submitted Thomasville, no.

THE COURT: That is not an answer.

THE WITNESS: No, I did not.

MR. LESCH: I have nothing further.

THE COURT: Very well. You may step down, next witness.

MR. PENNOYER: I have one question of the witness.

THE COURT: All right.

xx

REDIRECT EXAMINATION

BY MR. PENNOYER:

Q Mr. Donnelly, I show you Plaintiff's Exhibit 13 and I believe yesterday you testified that you thought there may have been another letter with a postscript on it. Do you recall that testimony?

A Yes, I do.

Q Do you wish to correct that answer?

A Yes, I do. When I looked at this copy yesterday I had forgotten that some of it was on the back and I had

remembered that remark particularly and not having seen it on here I thought it might be on another letter. I was in error, it is all here.

MR. PENNOYER: Thank you. No further questions.

THE COURT: Mr. Pennoyer, will you turn to page 67 and 68 of the record where at line 20, I believe, the question was propounded to Samuels as follows: "Between January 11, 1967 and July 5, 1968 did you in any way contact Thomasville" and then it goes on and tells about speaking to Donnelly.

Have you asked Mr. Donnelly about that? I don't recall it. Maybe you did.

MR. PENNOYER: I did, I believe, your Honor. Maybe I will cover it again.

THE COURT: All right, go ahead.

BY MR. PENNOYER:

Q Mr. Donnelly, on page 87 of the trial transcript, that is the transcript of this trial Mr. Samuels was asked this question or these questions and gave these answers which I will read to you:

"Question. Between January 11, 1967 and July 5, 1968 did you--that is Mr. Samuels--in any way contact Thomasville?

"Answer. Yes, I did, Judge.

"THE COURT: Go ahead.

"Question. What did you do?

"Answer. On or about the early part of February I spoke to Donnelly.

"THE COURT: What year?

"THE WITNESS: 1967.

"I spoke to Donnelly again. He said Finch was kidding you.

"THE COURT: He said what?

"THE WITNESS: He said Finch was kidding you when you saw him in Chicago. We think he is still available and you better bring him in. Find out if he wants to make a merger. Find out whether he wants to make a merger with us or with somebody else."

Mr. Donnelly, did you at any time ever make such a statement to Mr. Samuels or such a request?

A No, I did not.

THE COURT: What about the other testimony about telephoning Finch?

Well, I can't see how he can tell about that. Anything else?

MR. PENNOYER: No further questions.

THE COURT: No recross, I take it, Mr. Lesch?

MR. LESCH: No, your Honor.

jqe Donnelly - redirect [364a]

THE COURT: You are excused.

(Witness excused.)

end
la

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lb

jqsg 1

THE COURT: Your next witness, Mr. Pennoyer?

MR. PENNOYER: Mr. Warnock.

M A U R I C E J O H N W A R N O C K , called as a witness, first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PENNOYER:

Q What is your position with the Armstrong Cork Company today?

A I am chairman of the board.

Q What was your position in 1966 and 1967?

A President and chief executive officer.

Q How long have you been with Armstrong Cork?

A Since 1926.

Q Before June 1966 did Armstrong Cork Company have an acquisition committee?

A Yes.

Q What was its function generally?

A Its function was to study various industries and come to recommendation or make recommendations to the management as to fields in which it would be logical for Armstrong to expand through acquisitions.

We charged this committee with making a thorough analysis, first, of the industries, the likely competition

in those industries, whether or not we would have unusual knowhow where we could make a contribution to customers and whether or not we could likely enter those industries andmake a profit in doing so. Then the next thing after we did that was to study individual companies in the industries that looked promising for us and to make recommendations to what we call the president's office.

THE COURT: Don't let your voice fall, please.

Q Did you appoint the acquisition committee in 1965?

A Yes, I did.

Q Who did you appoint as head of the committee?

A James H. Binns, at that time senior vice president of the company.

Q Who else did you appoint to that committee?

A Do you want the names of the people I appointed?

Q If you can remember them.

THE COURT: Names and office titles.

THE WITNESS: I appointed Banzhaf who at that time was a staff vice president of our company, Donnelly who was treasurer of the company, Milton Ford who was a vice president of the company, Leslie Ellis who was the controller of the company --

MR. LESCH: What was that name?

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jqsg 3 Warnock-direct

A Ellis, Hazeltine who at that time was the associate director of research and actually I included all of our vice presidents with the exception of the executive vice presidents and there were 10 people on the committee.

I don't know if I can recall all the names on the committee. I can do it if it's essential. I can take the time.

Q Did this committee report to you from time to time during 1965 and 1966?

A Yes.

Q Were you aware generally of the companies that were being investigated by the committee?

A Yes.

Q Prior to June 196[illegible] were you made aware of investigations with respect to Thomasville Furniture Industries?

A Yes.

MR. LESCH: I object.

THE COURT: What is that?

MR. LESCH: I object to the question on the ground that it calls for hearsay.

THE COURT: What about that, Mr. Pennoyer?

MR. PENNOYER: I submit it's not hearsay. It's

part of the information we received or certainly internally and the fact Mr. Samuels may not have been present doesn't make it hearsay.

THE COURT: Does it make it admissible?

MR. PENNOYER: I believe it does.

THE COURT: Why?

MR. PENNOYER: Part of the regular company business.

THE COURT: Oral?

MR. PENNOYER: If your Honor will permit me I will submit Exhibits on that subject.

THE COURT: If there were communications, there may be something about them even though they are intra-office.

MR. LESCH: May we have the answer stricken that Mr. Warnock gave to the question?

THE COURT: Yes.

MR. PENNOYER: Please mark this document -- and it bears the number 33.

xxx (Defendant's Exhibit I marked for identification.)

MR. PENNOYER: And document bearing number 34 next in order.

xxx (Defendant's Exhibit J marked for identification.)

MR. PENNOYER: And document 35 next in order please.

jqsg 5 Warnock-direct [369]

(Defendant's Exhibit K marked for identification.)

MR. PENNOYER: And document number 71 next in order please.

(Defendant's Exhibit L marked for identification.)

Q Mr. Warnock, I hand you plaintiff's L, K, J, and I for identification and ask you what those documents are? If you give us the dates as to each one, either made or received by your company, it would be helpful.

A This exhibit is --

THE COURT: Which one?

THE WITNESS: This is L.

This is a layout of the Thomasville plant in Mississippi where Thomasville received and did certain processing of lumber.

2a

gaws 1 Warnock - direct [370]

THE COURT: What else is there there? State the number for identification.

THE WITNESS: This is K. It shows the 1964 results of Thomasville, Drexel, General Interiors, Kroehler and Hayward Wakefield. This is one of the analysis that was submitted by the acquisition--

MR. LESCH: I object, your Honor.

THE COURT: What's that?

MR. LESCH: I object to that description. I think it can be described without telling the contents of the exhibit.

THE COURT: Does it have a title on it?

THE WITNESS: 1964 results, Drexel, Thomasville, General Interiors, Kroehler, Hayward Wakefield.

THE COURT: Go on.

THE WITNESS: The next is Exhibit J, and it is titled "Furniture Industry Fringe Survey, 1963." This exhibit covers Thomasville, Heritage and several other--

THE COURT: Never mind anything else.

Anything else there?

Q Were these documents prepared in the regular course of business of Armstrong Cork Company in connection with its acquisition program?

A Yes.

gawe 2 Warnock - direct [371]

A Yes.

MR. PENNOYER: I offer those exhibits in evidence.

THE COURT: Show them to Mr. Lesch.

MR. PENNOYER: I'm sorry.

THE COURT: What you have were these documents? Did they come to your attention?

THE WITNESS: Yes.

THE COURT: Did all of them come to your attention?

THE WITNESS: Yes, that's right.

MR. LESCH: May I have voir dire on these documents?

THE COURT: Yes.

xx VOIR DIRE EXAMINATION

BY MR. LESCH:

Q Mr. Warnock, I show you Exhibit I.

Do you know who prepared this?

A I'm not sure who prepared it, no.

Q Do you know whether it was prepared by a member of the acquisition committee?

A Itwould have been prepared by a member of our controller's department who might not necessarily have been a member of the committee himself. The committee appointed a number of other people who worked with them. So I am

confident this was prepared by one of the men in our controller's department from looking at it, but I can't swear to that.

Q You don't know who prepared it, do you?

A I can't tell, no.

Q Do you knowwho prepared Exhibit J for identification?

A No, I can't tell you who prepared that.

Q You don't know whether it was prepared by someone working for Armstrong or someone else, do you?

A I'm sure it was prepared by someone working for Armstrong.

Q How do you know that, sir?

A Because of the nature of the--

THE COURT: Speak up.

A It was the areas we were working on at that time.

Q You don't recognize the handwriting--

A No, I don't.

Q --or the fact that this is a document from Armstrong file? You have knowledge of that either, do you?

A I can't say it came out of our files, no.

Q Do you know who prepared Exhibit K for identification?

A Yes, Mr. Ellis prepared this. His initials are

on it.

THE COURT: Will you please speak up. This isn't a little tete a tete between you and Mr. Lesch.

THE WITNESS: I beg your pardon, sir.

THE COURT: My hearing is fairly good, but I can't hear whispers.

THE WITNESS: Mr. Ellis.

Q Do you know that this came from Armstrong's files, referring to Exhibit K for identification?

A Yes.

Q How do you know that?

A Because his initials on here and the fact that I had seen it before.

Q Do you know who prepared Exhibit L for identification?

A No, I don't.

MR. LESCH: Your Honor, I object to Exhibits L, J and I--

THE COURT: On the ground he doesn't know in some cases who prepared them?

MR. LESCH: Either who prepared them or where they come from.

THE COURT: Overruled. That is not necessary under 1732.

gawe 5 Warnock - direct [374]

MR. LESCH: There's no evidence these were prepared in the regular course of anybody's business.

THE COURT: I think there's evidence that they were kept in the regular course of business. Is that so?

THE WITNESS: Right.

THE COURT: Speak.

THE WITNESS: Yes, sir.

xx (Defendant's Exhibits I, J, K and L, for identification received in evidence.)

THE COURT: The questions asked on cross examination, of course, may go into the origin of these, if they are taken subject to that.

Go ahead, counsellor.

xx BY MR. PENNOYER:

Q Mr. Warnock, have you ever met Mr. Samuels, the plaintiff, in this case?

A Yes.

Q And how many occasions have you met him?

A I think only once?

Q When was that?

A It was in the summer of 1966.

Q Can you fix a month or date or both?

A It was either towards the end of July or early August. I'm not sure.

gawe 6 Warnock - direct [375]

Q Where did you meet him?

A I met him first in my office and then later we had lunch at the Lancaster Country Club.

Q Did somebody bring him to your office?

A Yes.

Q Who?

A Mr. Binns brought him to my office.

Q Did you have a discussion with Mr. Samuels in your office before you went to the Country Club?

A Yes.

Q Who was present during that discussion?

A Mr. Binns was present. I'm not sure whether Mr. Donnelly was present or not. Of course, Mr. Samuels.

THE COURT: Were you present?

THE WITNESS: Yes.

Q Will you tell us what you said and what Mr. Samuels or Mr. Binns said in the course of this discussion?

A Well, I opened the conversation with Mr. Samuels by saying that I understand that you are a finder and tell me how you operate.

Then he explained his methods of operation. He mentioned a number of companies with which he was familiar and a general outline of the way he worked.

Then I told him how we work. I explained that

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we were knowledgeable in a good many areas, that we had been working on acquisitions and that we would only deal with a finder if we could deal on a specific customer by customer basis, and we would not consider signing any kind of a so-called global contract. If we were to have a contract with hi, we would have to have a definite understanding that under no circumstances could he go out and say: I represent Armstrong to people who we had not first approved because we did not want to have our name bandied around as being a conglomerate searcher for companies.

We took great pride in the fact we were looking for only a very few companies that would fit into our line of business and which our people would be compatible if we get together.

We didn't want it that we were out seeking--

MR. LESCH: I move to strike that, your Honor, on the ground the contract speaks for itself.

THE COURT: What do you say, counsellor? Is this as to some feature as to its operation or what?

MR. PENNOYER: It occurred before the contract. It certainly is background information leading up to the contract and particularly well contradicts matters stated by Mr. Samuels on his examination with respect to these meetings before the contract.

gawe 8 Warnock - direct [377]

THE COURT: I think it came in from Samuels, didn't it? I mean some testimony about conversations from Samuels?

MR. PENNOYER: There certainly was.

THE COURT: Then I'm going to let this stand.

MR. LESCH: There is no testimony, your Honor, by Mr. Samuels about this conversation with Mr. Warnock, nor is--

THE COURT: There doesn't have to be. You have already introduced testimony of Samuels and now you object to this testimony as to what was said to Samuels.

I'm going to let it in.

Q Will you continue, sir, with the description of the conversations you had with Mr. Samuels and Mr. Binns that morning or that day.

A Both Mr. Binns and I outlined areas in which we were interested, and that included among other things furniture and carpets, and we told him that because of the work we were already doing in both of those fields, there were a number of companies that we would not want any finder to participate in any negotiations that we were having or might have with those particular companies because we knew them well.

So in the course of the conversation we mentioned a specific number of companies, and in connection with furni-

gawe 9 Warnock - direct [378]

ture we mentioned Thomasville, Drexel and Henderon that I remember specifically.

There were companies with which we were familiar and we would not want a finder to participate. In the case of carpet, I mentioned--he brought up Mohasco. We knew Mohasco very well. We said we would not be finished with Mohasco.

THE COURT: Are you finished?

THE WITNESS: I also mentioned that we would not under any circumstances want him to be a finder if we were to deal with the McGee Carpet Company or the Maslin Carpet Company or the E. and B. Carpet Company, all of whom we had contacts with at that time.

Q Was there any discussion with respect to other areas of corporate activity?

A Well, we talked while he was there about the kind of contract. He said we don't need any contract. We said we would not work without a specific contract.

I told him unless he would be willing to work on the basis that I had outlined, we would not want to participate with him.

He said that that was satisfactory with him, it would be agreed that he would send us an outline of the kind of a contract he would want. I specifically said: You

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must include in that a paragraph about these exclusions that I have talked to you about.

He said that would be all right and he would send such a proposal.

Q Was there any conversation with respect to possible companies engaged in the flooring or building construction fields?

A Yes. We talked about resilient flooring. We told him, forget all about resilient flooring. Because of our size in that business, we would not consider another acquisition there under any circumstances.

end 2a

gwsg 1 Warnock-direct [380]

Q Did Mr. Samuels respond to that?

A Well, he -- I think he accepted that as far as that is concerned.

THE COURT: He accepted that?

THE WITNESS: He accepted that. In other words, he didn't disagree with us on that.

In the case of -- when he talked about Mohasco, tried to interest us in that, one of the things that I believe Mr. Binns mentioned instead of me was that that would be a company, that because of its size, we would probably have antitrust or Federal Trade Commission difficulties.

He kind of brushed that aside as said: I think I could handle that.

He mentioned that he knew Congressman Emanuel Seller, who I believe he said he had a talk with Mr. Seller's brother or something like that, and he could get that fixed up if we were interested in that particular deal. I remember that very well indeed.

Q Have you now told us about all the conversations that occurred in your office that morning before going to lunch?

THE COURT: In substance.

Q In substance.

A In substance, that's the general thing.

Q You say you thereafter went to lunch with Mr. Samuels?

A Yes.

Q And Mr.Binns?

A Yes.

Q Anybody else?

A I believe Mr. Donnelly was there.

Q Where did you go to lunch?

A The Lancaster County Club.

Q Did you have further conversations with Mr. Samuels there?

A Yes.

Q Will you tell us what those conversations were in substance, who said what?

A In general it was a continuation of the same things that we had talked about before. We reviewed some of these things again.

He talked more about some of the things that he thought he could bring in. We talked about other areas other than furniture and carpet because we thought that he could probably do more for us in those areas than in -- both in furniture and carpet we were very knowledgeable.

MR. LESCH: I object to, "We thought," and everything that follows.

THE COURT: Unless you told him, it's out. Was that in your discussion?

Is that what you said or was it to your own reasoning?

THE WITNESS: That was what we told him.

THE COURT: Let it stay then.

Q Have you now completed the description of the discussion at the Lancaster Country Club lunch?

THE COURT: On what day is this?

THE WITNESS: I can't remember the day, your Honor. It was either late in July or early August, early August of 1966. I don't have a memory.

A Yes.

Q Did you have any subsequent meetings with Mr. Samuels thereafter?

A I don't recall any more that I participated in personally.

THE COURT: Any telephone calls?

THE WITNESS: No, I had no telephone calls with Samuels.

Q There's been testimony here about a meeting at the Wachovia Bank on October 18, 1966.

Did you attend that meeting?

A No.

Q When did you first meet Mr. Finch of Thomasville?

A Well, the first time that I remember meeting him was when he came to Lancaster on January 4 and 5 and was there on the 6th.

THE COURT: '67?

THE WITNESS: '67.

A (Continuing) I may have met him two or three years before that at an NAM meeting, National Association of Manufacturers Board.

The significance of that meeting was -- as I say, I couldn't say I hadn't met him. We certainly weren't friends.

Q Were you with him during any part of his visit to Lancaster on January 4, 5 and 6?

A Yes.

Q How many days were you with him?

A I was with him every day at deals and then we had a substantial private conversation in my office before he left togo home, a long personal talk with him.

Q Will you tell us in substance what your conversations were with Mr.Finch on that visit of his to

Lancaster.

THE COURT: You'd better start with the 4th.

MR. PENNOYER: All right.

Q Let's take the 4th of January first.

MR. LESCH: I object to this on the ground it's cumulative, your Honor.

THE COURT: What's that?

MR. LESCH: I object on the ground it's cumulative, your Honor. We had this now from Mr. Finch and we have had it again from Mr. Donnelly and we have also had it from Mr. Banzhaf. I don't see that --

THE COURT: Do you want to concede that their testimony was correct?

MR. LESCH: I don't want to concede it was correct.

THE COURT: Overruled.

A Well, so far as the first meeting was concerned, the first part of it was primarily social, getting acquainted.

I told him how much I had heard about him through Banzhaf and other people that we knew, how favorably impressed we were with Thomasville, with their people, with their organization, with the quality of products that they made and how we felt, that it was very

logical for us to be getting together, how delighted that I was that he came up to Lancaster with two of his associates to see first-hand our facilities.

THE COURT: Who did?

THE WITNESS: I told Mr. Finch this.

THE COURT: Is this what you just stated, something you told to Finch?

THE WITNESS: Yes.

THE COURT: Was Samuels there then?

THE WITNESS: No, Samuels was not there.

THE COURT: All right.

MR. LESCH: I also object to the conversation on that ground, your Honor --

THE COURT: Overruled.

MR. LESCH: -- as I have to the others.

THE COURT: I treated that several times before.

MR. LESCH: Your Honor has instructed me to make an objection on each occasion.

THE COURT: Yes, I know it.

Q Will you continue with the discussions of the 4th between you and Mr. Finch.

MR. LESCH: I have the same objection to all conversations on the 4th, 5th and 6th at which Samuels was not present.

THE COURT: Yes. Overruled on all of them.

Read this question, please.

(Question read.)

A I want to get down to what I said on the 4th and what I said on the 5th. That's a little vague in my memory, to be perfectly frank. The conversation I remember best was the final conversation I had with him before he went home.

THE COURT: On the 6th?

THE WITNESS: On the 6th.

Q Give us that one, sir.

A Well, I told him --

THE COURT: This is, to be certain, Finch; is that correct?

THE WITNESS: Yes, Finch, in my office. As I remember, Mr. Binns was the only other person present in that conversation. I think it was just the three of us.

A I told him what we thought about Thomasville, why we thought it was a logical acquisition so far as Armstrong was concerned.

Then I told him why I thought that Armstrong would be a logical partner for Thomasville, how the two fitted together, talked about people, talked about the relationship of our product lines, the fact that

Armstrong produced a quality line of products and that Thomasville did. So that the two would fit very logically together.

I talked about the amount of advertising that Armstrong had done over more than 50 years, the logical prospects for Thomasville products. I told him about our knowledge of the furniture industry because for over all these years we sold our resilient floors to furniture stores. So we knew the market very well. I told him about our sales organization, what we thought we could bring to Thomasville because of the training that we had given our sales organization in merchandising and marketing, and that on the basis of our analysis of the furniture industry, we didn't see anybody that was in the industry that was doing this kind of marketing. We thought we could render service there.

Then I talked about our production background and experience, how it seemed to us that the furniture industry was, frankly, very backward, that the labor content was very high in relation to the kind of business we were in, that we believed with proper engineering, proper research and that sort of thing, that we could produce better quality furniture products to where we could give the customer more value and better service than

was being done at that time.

You asked me what Mr. Finch said?

Q Yes.

A He said that he was impressed with what he had seen at our place, that this is one of the things that prior to the time that he came up there while Mr. Banzhaf had been talking to him for quite a long period of months, he was slightly open-minded, but he had always assumed that he wanted to go it alone.

Now, we had sort of shaken that confidence on his part. He would go home and talk to some of his associates about that. He mentioned specifically some of these outside directors, two outside directors and two members of his family that he wanted to consult, and that he would let me know.

He said: I'll call you and let you know what I think about this.

That's the way we departed. One other thing I should stress.

3a

jqe 1 Warnock - direct [389]

Q These are conversations you had?

A That is right. When I opened the conversation with him, that final day--

THE COURT: Him being Finch?

THE WITNESS: Yes. I asked him if he had anybody representing him and in negotiations of this kind and he said he did not. I said we don't have either. I said I want to make sure whether or not there is going to be a finder or third party in this thing and he stressed under no circumstances would he want to deal with this if there were a third party in it. He talked about the confidentiality about this thing so far as he was concerned because he said it would adversely affect Thomasville's relations with the customers and I would not want my associates to know about it because the employment in the furniture industry was tight and he said I am afraid I would lose some of my good people if they found out I was considering merging.

Under no circumstances did he want us to let the word get out that we were talking to him. We had some question there as to when we could do this--

THE COURT: I don't understand. You had some question. Did you say something?

THE WITNESS: Well, what we talked about was if we were in negotiation whether we could keep this confiden-

tial--

THE COURT: This was to Finch?

THE WITNESS: Yes, to Finch. Because of the fact that when you get into negotiations leading to likely merger then there is a question of inside information and we agreed that we had not gone far enough.

In other words, he had not made up his mind to be receptive enough to our proposal and we didn't get down to making a specific price offer to him so we agreed we could continue to treat these conversations as confidential.

Q When was the next time you heard from Mr. Finch either by phone or saw him in person?

A The exact day I can't tell you but it was within about a week of that time, he was there--

THE COURT: Within a week of the 6th?

THE WITNESS: Yes, probably about four days after that.

He called me from Chicago and he was obviously upset because he said "A man named Samuels came up to me at the market in one of the showrooms and told me he was representing Armstrong."

He said that "I thought that was peculiar in view of the conversation we had just last week on the 6th in which we agreed"--

jqe 3 Warnock - direct [391]

THE COURT: You don't need to refer to that.

THE WITNESS: That is the next time I heard from him.

THE COURT: What did you say?

THE WITNESS: I told him that it was untrue that Samuels was representing us, that we had a clear understanding with Samuels from the date that we had made the contract with him that under no circumstances was Thomasville to be included in the companies for which he represented us and also that we had already advised Mr. Samuels that the contract with him was terminated.

That contract was terminated on Sunday by oral conversation with Donnelly over the telephone with Samuels so that when he talked to Finch he was very definitely violating two things that he had agreed to with us. One was that he was out of the Thomasville account, should never been in it. That is what we would call an in-house transaction and secondly, we had the privilege of terminating the contract with him whenever we wanted to and we had already terminated the contract. I was pretty mad when I got this.

THE COURT: Strike that out.

Q What if anything, did you do after that phone call with respect to the call?

A The first thing I did was call Mr. Binns and tell him what happened. The next thing I did was to call Mr. Donnelly and I don't know if he was out of town or in his office but apparently I didn't get him.

Then I called Banzhaf and told him what happened and I told him to be sure that he got to Donnelly as soon as he could and to have Donnelly to get to Samuels to let him know that he had violated the understanding that we had and that under no circumstances was he to again in any way approach Finch.

THE COURT: All right. Anything else?

MR. PENNOYER: Yes, sir.

Q What was your next meeting with Mr. Finch?

A The next meeting I had with him--I had several telephone calls. The next meeting I had was in Philadelphia at the Barclay Hotel and I believe that was on the 27th of April.

Q Briefly, you say you had several phone conversations with Mr. Finch. Did they have anything to do with the matter that had been discussed in Lancaster in January?

A Yes.

Q Briefly tell us what the conversations were?

A Primarily we kept each other posted on how his people were reacting. He told me about the conversations

he was having with some of his directors, what their reaction was and a substantial amount of the conversation was leading up to when we could get together and setting up the date and we did set up this date to meet in Philadelphia.

Mr. Binns and I met him at the Barclay Hotel in Philadelphia.

THE COURT: Are you finished?

THE WITNESS: Yes.

THE COURT: Approximately between what dates were these telephone conversations you just discussed?

THE WITNESS: They were between the January call that I just described, he called me from Chicago, and this April 27th meeting.

Q Can you fix those dates exactly, Mr. Warnock?

A Not out of my mind, I can't. I probably could look through my notebooks and get a record of them. But I would say this: In every case he called me rather than my calling him because he didn't want me to call him at Thomasville so he would call me.

I don't know where he called me from, whether out of his office or where.

Q Will you describe or tell us what was said at this meeting at the Barclay Hotel in Philadelphia between you, Mr. Binns and Mr. Finch?

jqe 6 Warnock - direct [394]

MR. LESCH: Same objection.

THE COURT: Same ruling.

Has the date been stated?

Q Can you fix the date of the meeting in Philadelphia?

A April 27, 1967, as I recall.

Well, at that time in Philadelphia I made a complete presentation of how I thought the two companies could come together. I talked to him about how we would operate if we got together, where the Thomasville headquarters would be. And we agreed we would keep it in Thomasville. We agreed we would opt Thomasville as a subsidiary of Armstrong and we would retain the name Thomasville in the operation.

That he would continue as President and that he would also be elected a Senior Vice President of the Armstrong Cork Company and would be elected a director of Armstrong Cork Company.

We talked about retirement situations, how the two would mesh on that. We talked about personnel, how people could be shifted from one company to the other so that we could get a certain amount of cross fertilization and he, of course, talked about what he would want if we got together on that sort of thing, what would be acceptable to him and to his people. I think that is the general thing.

In other words, we got right down to specifics as to how the two would mesh if we were able to get together.

Q How as the matter left at that meeting in Philadelphia on April 27?

A It was left that he would study this whole thing, talk again to some of his associates and he would call me again and let me know how he was getting along on that set up.

Q What was the next conversation you had with Mr. Finch, either by phone or in person?

A As I say, I had many telephone conversations with him. I can't recall the time of those and the gist always was that I was trying to sell him and he always seemed to have some excuse as to why he was not ready to make the final deal.

Q Did there come a time when Mr. Finch called you about rejection of the proposal?

A He tried to call me but didn't get me and so he did call Binns.

THE COURT: When?

Q He got Mr. Binns?

A Yes, I think it was in November of 1967.

MR. LESCH: I object to that on the separate ground of hearsay.

jqe 8 Warnock - direct [396]

THE COURT: Yes, move to strike.

I move to strike.

Granted.

I suppose Binns testified to it, didn't he?

MR. PENNOYER: He will testify, your Honor.

Q What was your next meeting with Mr. Finch? Let me do it this way: Were you sometime in 1967 advised that Mr. Finch had rejected the proposal?

A Yes, I was.

MR. LESCH: I object to that, your Honor.

THE COURT: Does he have to go into the conversation, counsellor, is that the trouble? Is it form or what?

MR. LESCH: No, it's hearsay.

THE COURT: Overruled. It isn't hearsay as between the two companies and I have consistently ruled on it.

MR. LESCH: Your Honor instructed me to make objections. He said were you advised.

THE COURT: There isn't any difference here than anything else.

MR. LESCH: The question was were you advised. It is not clear from that question whether he was advised from someone from his own company--

THE COURT: Sustained on that ground.

Q Were you advised by someone in the Armstrong Cork

jqe 9 Warnock - direct [397]

Company that Mr. Finch had rejected your proposal?

MR. LESCH: I object to that on the ground that it is hearsay.

THE COURT: Yes. I thought there was some direct communication between Finch and this witness.

Q What was your next meeting with Mr. Finch--

THE COURT: Off the record.

(Discussion off the record.)

Q Can you fix the date of your next meeting with Mr. Finch face to face after the Barclay Hotel meeting?

A I believe the next meeting was when we went down to Thomasville.

Q Who is we?

A Mr. Binns and Mr. Banzhaf. And also myself.

THE COURT: What was the date?

THE WITNESS: I think that was in April of 1969.

Q How long did you three spend in Thomasville on that occasion? That is,approximately.

A We spent two days down there. We went first to the Founders operation. We went down and had lunch with the president of the Founders at his house and he showed us that he used his own home as a way of displaying Founders furniture. We went to the Founders factor on the first day and the second day we went through all the Thomasville

facilities.

Q Was Founders related to Thomasville?

A It is a subsidiary of Thomasville. Mr. Thrower was the vice president. The largest stockholder outside of the Finch family in Thomasville Furniture Industries was he.

Q Briefly after this visit to the Founders plant, will you tell us about the conversations you had with Mr. Finch on that occasion?

MR. LESCH: Same objection.

Q And where they were.

THE COURT: Overruled.

A We again went in to detail on how the two companies would operate.

In other words, we agreed, Finch and I, that we were far enough into these conversations that these, what you might say, nuts and bolts things were becoming important. We talked about a lot of detail of that kind, about how people would be used, where they would be placed, who would do what in relation to research, how our advertising would fit together, how we would use the Armstrong name in connection with the Thomasville name.

We talked about even such things as contributions.

In other words, how Thomasville had made contributions in Thomasville, what Armstrong attitude would be. We got intowhat you might call minute details about how we

jqe 11 Warnock - direct [399]

would operate together.

THE COURT: That is enough.

Q How did that meeting or visit break up? How was the matter left at that point?

A It was left the same way it had been in each one of the others. We didn't get a specific answer from Mr. Finch. He wanted to study it further.

Q Subsequent to the April meeting in Thomasville with Mr. Finch, did you have another meeting?

A Yes.

Q When?

A The next meeting that I remember was the one that was in June, June 30, July 1 and July 2 where we met down in Sea Island on the 30th of June and we were at Sea Island on the first of July and then on the morning of the 2nd of July we flew up to Winston-Salem.

Q Who was present from Armstrong at the meeting at Sea Island starting the 30th of June?

A Mr. Binns and Mr. Banzhaf and myself.

Q Who from Thomasville was present?

A Mr. Finch, Mr. Thrower and Mr. Donnelly--or rather Mr. Doherty, and I believe that is all. I don't remember anyone else from Thomasville being present.

Q Briefly what were the conversations between you

gentlemen at that time?

MR. LESCH: Same objection.

THE COURT: Same ruling.

Q Who said what?

A Well, at this time we were down to where it was obvious that Thomasville was really serious about getting together so we talked specifically about how we would put these two companies together.

I outlined what I thought was a fair basis for evaluating their stock in relation to our stock.

One of the things that came into the picture was the fact that U. S. Plywood Champion Paper had acquired Drexel and that set sort of a pattern as to the premium price that the acquiring company would have to pay to get the acquisition.

Q This is part of the conversation?

A That is right.

In other words, Mr. Finch said that he could not face his stockholders if he didn't have as favorable a proposition as the Drexel people got from U. S. Plywood Champion Paper.

So we went on and a good part of the conversation was what would be the right ratio of Thomasville stock to Armstrong stock and then we also had a very long discussion

about the question of the management because Mr. Finch tried to sell us on the idea that Mr. Thrower should become an Armstrong director and an officer and we told him that that was not possible.

Mr. Finch would be a senior vice president of Armstrong and a director of Armstrong.

THE COURT: All right. This is getting into rather detailed areas.

Q On the occasion of that visit was an informal agreement made to merge?

A Yes.

Q Thereafter I understand that you went to Winston-Salem on the morning of July 2?

A Yes.

3b Q Briefly what happened there?

A Well, we shook hands. I shook hands with Mr. Finch at two o'clock on the morning of the 1st of July or rather the second of July, I am sorry, two o'clock that morning. We got up at 7 o'clock and went to Winston-Salem to really put the nuts and bolts together.

In other words, from my point of view the deal was closed at that point. We had all the legal things to go through. In other words, the question of what we had to do to arrange for a stockholders' meeting. We called, Mr.Binns and I, he called half of our directors and I called the other half to let them know and be sure that they agreed as to what we agreed to. We met in the law office of Thomasville's lawyers.

THE COURT: That is enough. That becomes more or less cumulative anyway.

Q Subsequently then the merger was consummated when?

A Well, as I recall, the final consummation was on November 1. In other words, we had to go through all of the preliminaries of issuing proxy statements and getting SEC approval and getting auditors in to approve these figures that were in because we didn't have an audit and all this detail.

Q Would you tell us, as of July-August 1966, what was your opinion as to the capabilities and proficiencies of Mr. Banzhaf?

MR. LESCH: Objection.

THE COURT: How is that relevant?

MR. PENNOYER: This relates to Mr. Samuels' testimony in which Donnelly said that management considers Banzhaf incompetent in the acquisition field.

THE COURT: Sustained. You may elicit any conversation about Banzhaf, at least to Samuels, if there was any or negate it.

Q Did you at any time say to Mr. Samuels that you -- in words or in substance -- questioned the abilities of Mr. Banzhaf in the acquisition field?

A No.

MR. PENNOYER: No further questions.

CROSS EXAMINATION

BY MR. LESCH:

Q Mr. Warnock, you had a meeting with Mr. Samuels in late July or early August 1966?

A Yes.

Q And at that meeting Mr. Binns was present?

A Yes.

Q And at that meeting you outlined to Mr. Samuels a

number of companies which you said were excluded from the agreement?

A Yes.

Q And you told Mr. Samuels that you wanted those companies specifically excluded?

A Yes.

Q And then, do you recall that Mr. Samuels sent a draft of the agreement?

A Yes.

Q And was that draft shown to you, sir?

A Yes.

Q And that draft did not specifically exclude any companies, did it?

A No.

Q Then your own legal people went to work on the final agreement?

A Yes.

Q Did you see that final agreement before it was signed?

A Yes.

Q And that final agreement also did not exclude any specific companies, did it?

A No.

Q So you knew when the final agreement was entered

into that no companies were excluded from it, didn't you?

A That is not true. The reason that I insisted on paragraph 4 being written as it was was to confirm the understanding that we had with Mr. Samuels in the conversation which I testified to previously and I would not list the names of the excluded companies because that would imply they would be the only ones.

I made it clear to him that under no circumstances was he to approach any company without first getting our permission to do so. If I were willing to put in specific companies, this would make the rest of the situations a global contract which I would not permit our people to sign.

THE COURT: Do you contend that under this contract that the Defendant Armstrong here was obliged to negotiate as to the acquisition of any company that Samuels came in with?

MR. LESCH: Certainly not.

What I do contend is that this contract gave Mr. Samuels a blank check to negotiate with any company and certainly in the furniture fields and I rely on the language of the contract itself.

THE COURT: I am not sure that that is a permissible inference from the contract but go ahead.

jqsg 5 Warnock-cross [406]

Get through with this cross examination, if you will.

Q Now, Mr. Warnock, you also knew, sir, did you not, that the contract did nto require Mr. Samuels to obtain your permission before approaching any company?

A My understanding of the contract was that he could not approach any company and say he represented Armstrong. He could approach a company and say "Are you interested in acquisitions." But he could not say that "I represent Armstrong and would you be interested in my approaching Armstrong about you".

I made that very clear to him.

Q The contract doesn't say anything like that.

MR. PENNOYER: Objection.

THE COURT: The interpretation of the contract is a matter for the court, it seems to me. Do you agree with that, Mr. Pennoyer?

MR. PENNOYER: Yes, sir, I do and I object to the question.

THE COURT: Sustained.

MR. LESCH: May I have Exhibits I, J, K and L, please.

THE COURT: What is this about?

MR. LESCH: It's about the origin of these.

Q Do you know where any of these docu

Exhibits I, J, K and L come from?

THE COURT: Didn't you ask him that before on the voir dire?

MR. LESCH: Your Honor suggested that I might inquire into the origin of the agreements.

THE COURT: You want to adopt the same questions now?

MR. LESCH: No.

THE COURT: Then get a new question before you go ahead.

MR. LESCH: I don't think I asked that question on the voir dire, your Honor.

THE COURT: Whatever you asked before is in the record. I don't think you need to repeat those. If you have some new question, go ahead.

Q Do you know where these exhibits come from, Mr. Warnock.

THE COURT: Take them separately.

THE WITNESS: This Exhibit K came from our Armstrong staff and that is all. The other three exhibits, I, J, and K, I can't swear that I know where they came from.

Q Do you know whether they came from the Armstrong files?

THE COURT: He testified as to that, hasn't he?

MR. LESCH: No, he hasn't, your Honor.

THE WITNESS: I can't swear they came from the Armstrong files.

MR. LESCH: I move that this evidence or exhibits be withdrawn.

THE COURT: What do you say, Mr. Pennoyer? It looks like a deficit in proof.

MR. PENNOYER: I understood that he knew that they were collected by the acquisition committee.

THE COURT: You heard what he said now.

I will defer on this and you may examine him on redirect and then I will decide it.

Anything else now, counsellor?

Q Mr. Warnock, when Mr. Finch's company, Thomasville, was merged into Armstrong, did Mr. Finch and his family become the largest stockholders of Armstrong, to your knowledge?

A I believe they did. I didn't make a specific check on it, but I believe they are.

THE COURT: Are they stockholders now?

THE WITNESS: Yes, they are.

Q In approximately January 10, 1967 you had a telephone conversation with Mr. Finch, is that correct, sir?

THE COURT: January what?

jqsg 8 Warnock-cross [409]

MR. LESCH: January 10, 1967. I believe the witness testified that it was approximately four days after January 6.

THE COURT: Is that date substantially correct?

THE WITNESS: I can't identify the exact date. It was after Mr. Finch had been at the Chicago market.

THE COURT: You said about four days after.

THE WITNESS: That would be my recollection of it.

THE COURT: He concedes that.

Q Will you tell us again what Mr. Finch said to you at that time and what you said to him?

A Well, Mr. Finch said to me that while he was at the market in a showroom -- and I got the impression it wasn't his own showroom but I may be wrong but the impression I got was that he was not in his own showroom, that a man named Samuels came up to him and said he was representing Armstrong. Mr. Finch said that I couldn't understand that so I brushed it aside and didn't talk to him about that because in view --

2/ THE COURT: You don't need to say because.

THE WITNESS: He said that in view of the understanding that you and I had when I was in Lancaster, Finch was in Lancaster, I couldn't believe that this man

jqsg 9 Warnock-cross [410]

was telling the truth when he said that he was representing Armstrong. I in turn assured him that this man was not representing Armstrong.

THE COURT: Yes, you testified as to that.

I don't know that counsel wants the witness to repeat the conversation.

Q You told him that he was not representing Armstrong and you gave him two reasons for that, did you not, sir?

A Gave Finch two reasons for it?

Q Yes, sir.

THE COURT: Just yes or no.

THE WITNESS: I am not sure whether I did or not. I was upset by this thing --

THE COURT: Never mind about that. Did you say something and give him a reason?

THE WITNESS: I assured him that this man was not representing us and I am confident that I did mention the two reasons. I know I told him that at the outset when we made the contract with him that it was very clearly understood that Samuels was not in on any dealings we would have with Thomasville.

Q Did you also give him as the second reason that Mr. Samuels had been terminated on Sunday?

A I think I did.

Q Is it now your best recollection that you did not give him that reason at that time?

A My best recollection is that I did give him that reason.

Q Did you say to him at that time, sir, that he had been terminated on Sunday and that was effective immediately when he was spoken to on Sunday?

A My understanding was that it was effective immediately.

THE COURT: Did you tell him that?

THE WITNESS: I don't know that I went into that detail, your Honor.

Q Didn't you know, Mr. Warnock, that any termination notice under the agreement was only effective after 30 days?

A The understanding --

THE COURT: In the written agreement?

MR. LESCH: Yes.

THE COURT: Answer the question.

THE WITNESS: It didn't enter my mind at the time. I thought we had an understanding that when we told him the contract was terminated and indicated to him he was not to make any more contacts no matter who it was.

jqsg 11 Warnock-cross

Q You forgot about that provision when he spoke to Mr. Finch?

A I think that would be fair to say, yes.

THE COURT: Anything else?

Q You said that Mr. Samuels had been terminated on the prior Sunday which I believe was January 6.

THE COURT: Not Mr. Samuels, the agreement.

MR. LESCH: Mr. Samuels had been terminated on the previous Sunday in the conversation.

THE COURT: I don't know how you terminate a man, counsellor. It's just a matter of slight form.

MR. LESCH: Excuse me, your Honor.

THE COURT: You can't terminate a man unless you do something else.

MR. LESCH: I stand corrected.

THE COURT: Reframe it, that is all.

Q The agreement between Armstrong and Mr. Samuels was terminated or had been terminated the prior Sunday, is that correct, sir?

A Yes. I don't believe that was the 6th though. I may be wrong on it.

Q I may be wrong.

A I think it was the 7th, maybe the 8th even. I think maybe it was the 8th.

4a

gawe 1 Warnock - cross [413]

Q Whatever, it had been terminated on the prior Sunday?

A Yes.

Q Before Mr. Samuels' agreement had been terminated, had you had any conversation about termination of the agreement with anyone at Armstrong?

A Yes. We--

Q Will you tell me with whom, sir?

A Banzhaf and Binns and I and I assume Donnelly. I'm not--

THE COURT: I can't hear what you say about Donnelly.

THE WITNESS: I beg your pardon, sir.

A Binns and Banzhaf and I. I can't be sure whether Donnelly would have been on the conversation or not.

Q Was this one conversation at which Binns and Banzhaf were present with you?

A At least one. I can't testify to more than one.

Q Can you tell us the substance of what was said at that time?

A Well, we reviewed Samuels work with us and concluded that we were not getting anyplace, and that we, in fairness to him and ourselves, should terminate the relationship.

gawe 2 Warnock - cross [414]

Q Were there any particular aspects of Mr. Samuels' work that you reviewed?

A I don't remember any--

THE COURT: I don't know what that question means.

Q Did you discuss Thomasville?

A Not in this context, no.

Samuels was never in on the Thomasville transaction in my mind whatsoever.

MR. LESCH: I move to strike that.

THE COURT: Yes, strike that. Just answer his questions. That will keep you busy just to do that.

Q After you had this telephone conversation with Mr. Finch, did you ask Mr. Donnelly whether he had, in fact, sent this termination letter to Mr. Samuels?

THE COURT: Just yes or no.

A I didn't ask him. He told me.

Q He told you that he had?

A Yes.

MR. LESCH: I have nothing further.

THE COURT: Any redirect?

MR. PENNOYER: No, your Honor.

THE COURT: You are excused.

(Witness excused.)

THE COURT: Is Binns the next witness?

gawe 3 [415]

MR. PENNOYER: Yes.

THE COURT: Suppose we take the recess now.

(Recess.)

THE COURT: Call the next witness, please.

MR. PENNOYER: Mr. Binns, please take the stand.

J A M E S H. B I N N S, called as a witness by the defendant, having been first duly sworn by the clerk of the court, testified as follows:

DIRECT EXAMINATION

BY MR. PENNOYER:

Q Mr. Binns, what is your position with the Armstrong Cork Company today?

A I'm president and chief executive officer.

Q As of 1966 and 1967, what was your position?

A I was senior vice president of the company and the director.

Q Were you a member of the Armstrong acquisition evaluation committee?

A I was chairman of that committee.

Q Who designated you chairman?

A Mr. Warnock, who was then president.

Q Did you yourself designate a sub-committee to do with furniture?

A I did.

gawe 4 Binns - direct [416]

Q Who did you appoint to head that?

A Mr. Banzhaf.

Q Do you remember the approximate date of that designation or appointment?

A I would say the committee was formed in 1965 and this was very early in the committee's activities.

Q Did you ever meet Mr. Samuels?

A Yes, I did.

Q How many times have you met him face to face?

A Twice, I believe.

Q How many conversations have you had with him other than face to face conversation?

A None.

Q None?

A None.

Q All right.

THE COURT: No telephone conversation?

THE WITNESS: No telephone conversation.

Q When was the first meeting that you had with Mr. Samuels?

A July 22, 1966.

Q Where was that?

A In my office in Lancaster, Pennsylvania.

Q At the Armstrong plant?

A That's correct.

Q Was anybody else present when you met him?

A Mr. Donnelly introduced me to Mr. Samuels. As I remember, Mr. Donnelly left Mr. Samuels and me alone in my office.

Q Did you then have a discussion with Mr. Samuels?

A I did. Mr. Samuels--

THE COURT: Wait until he asks you the question.

Q Who said what?

THE WITNESS: I'm sorry.

A Mr. Samuels had been brought to our attention through Mr. Donnelly's connections with one of the banks as a man who had some experience in acquisitions.

MR. LESCH: I object to this, your Honor.

THE COURT: Strike that.

You are asked to tell first what Samuels said and then what you said.

A I first asked Mr. Samuels to describe how he worked, how he approached what his job was, how he approached it.

I then described to him our company. I told him that we were in the packaging business, we were in the building products business, that we were in the flooring business and that we were in industrial specialties.

I said that we were looking at acquisitions in

this entire area.

I told him that the acquisition committee had been quite active, that we had been working with other people like Morgan Guaranty. We had at least four meetings with Morgan Guaranty on particular acquisition possibilities.

I said we were very knowledgable in two areas particularly that we were interested in. One was furniture, one was carpet.

I said specifically that I doubted that he could give us much help in either of those. I said how do we go about this? Suppose you say,well, I have discovered somebody and we are already working on it. Samuels said there's no problem at all in that.

Obviously if you are in first, then I can't help you.

I specifically told him that Henerdon, Thomasville, Drexel were excluded from anything that he could help us on, that we already had things going in those particular areas.

I also told him that in Canada we were very close to an acquisition with a Britain carpet company.

Samuels then suggested, what about Mohasco?

As Mr. Warnock has repeated, we explained to him that we wouldn't consider Mohasco because of their size.

Q Is that the entire conversation you had with him

gawe 7 Binns - direct

that day?

THE COURT: The substance of it.

A The substance, yes.

Q Thereafter, did you go anywhere with Mr. Samuels?

A We went to lunch at the Lancaster Country Club.

Q Did you have further conversations at the country club?

A Yes.

Q With Samuels?

A Yes. I think we had more of the same. He described some of his experiences. One in particular that I remember was--had to do with a negotiation that he had been working on to sell Ozite.

THE COURT: I think we can skip that.

Q Was there a second occasion when you had a talk with Mr. Samuels?

A I was present when he came back. I think it was the 10th of August.

At that time--

Q Did you meet him at that time?

A I did meet him.

Q Did you have a discussion with him?

A I introduced him, as I remember, to Mr. Banzhaf and to some other people with whom he would be working.

gawe 8 Binns - direct [420]

Q Did you have any discussion with him besides the introduction?

A Not really. Wait a minute. I forgot even one thing.

In our first conversation--

Q This is now the July 1.

A This is going back to July 22.

When we were saying how do you work, I said, do you have a contract form? I said, we are a little leary of "finders" because we have been active in these fields and we wouldn't want to get involved if you are claiming something that really we had already been working on. He said, I don't work with a contract, I just shake hands.

I said we would want something more than that.

So at that time he agreed to submit to us a contract which subsequently he did. As I remember, we revised it and sent it back to him.

Q All right.

This discussion that you have just mentioned--

THE COURT: On or about August 10 I thought.

MR. PENNOYER: He went back to July.

THE COURT: Are you through with July 22?

THE WITNESS: I am, sir.

THE COURT: Let's get on to August.

gawe 9 Binns - direct [421]

Q In the August one I think you already testified that you introduced him to Mr. Banzhaf?

A Mr. Banzhaf and I'm not sure that I didn't introduce him to Mr. Painter and perhaps Mr. Ellis.

Q Did you have a discussion with Samuels apart from introductions to these gentlemen?

A I really didn't.

Q All right.

Since then have you spoken to Mr. Samuels?

A I have not.

Q All right, sir.

When did you first meet Mr. Finch?

A I first met Mr. Finch on January 4, 1967.

Q Where was that?

A In Greensboro, the Greensboro Air Port. I flew down with Mr. Banzhaf in our company plane to pick up Mr. Finch, Mr. Jennings and Mr. Doherty who were coming to Lancaster as our guests.

Q Did you attend a meeting at the Wachovia Bank in North Carolina on October 18, 1966?

A I did not.

Q All right.

So your first meeting with Mr. Finch then was on January 4?

gawe 10 Binns - direct [422]

A Yes, it was.

Q Did you have conversations with Mr. Finch or any of his group from the Thomasville Furniture Industries on the 4, 5 and 6th?

A Oh, yes.

THE COURT: This is 4, 5, and 6 of January '67?

THE WITNESS: Yes.

THE COURT: Put it into your question. Otherwise it is vague.

MR. PENNOYER: '67.

A There was no secret that--

THE COURT: Never mind. You have answered the question.

Q Were you with Mr. Finch during that period of time?

A We were--we had invited Mr. Finch to Lancaster hoping to convince him that he should merge with Armstrong. Our conversations with Mr. Finch were entirely along the lines of why we felt that Thomasville, Armstrong merger would be a good thing for both companies.

Q All right.

Were you personally present with Mr. Finch during these conversations?

A I was personally present and personally taking part

gawe 11 Binns - direct [423]

in the conversations during the entire three days.

Q All right.

Can you tell us what conversations you had with him briefly on the4th of January?

A The 4th of January--

MR. LESCH: Same objection, also on the ground it is cumulative.

THE COURT: Overruled.

A The 4th of January the conversationwas really getting acquainted as we were flying up in the plane.

THE COURT: Was there any conversation which was not in the plane?

THE WITNESS: Oh, yes. We had dinner and we had cocktails that night. We were together until about 10 o'clock when he went to the hotel. We picked him up the next morning--

THE COURT: Can you elicit in general what this was all about without going into detail since there had been other witnesses?

THE WITNESS: The whole point--

THE COURT: Let him ask you the question.

Q Were you presnnt in Court when Mr. Warnock testified on the conversations that he had with Mr. Finch during January 4, 5 and 6 of 1967?

A I was.

Q Do you agree with the conversations as described by Mr. Warnock?

A I do.

Q Good.

Subsequent to that meeting in Lancaster with Mr. Finch, did you receive any calls from anybody regarding Mr. Samuels?

A I did not, no.

Q Did you have any conversations with anybody in your organization concerning Mr. Samuels? I'm fixing specifically--

THE COURT: Just yes or no.

A Yes.

Q When did that occur?

A Sometime shortly after Mr. Finch had left Lancaster, which would be on January 6, Mr. Warnock called me--

THE COURT: Never mind what he said.

Q The next question is: What did Mr. Warnock say to you?

MR. LESCH: Objection.

THE COURT: Sustained.

Q Did Mr. Warnock at that time give you any instructions--

gawe 13 Binns - direct [425]

MR. LESCH: Objection.

Q --regarding Samuels.

THE COURT: Warnock was president.

A Yes.

THE COURT: What was your position?

A Senior vice president.

THE COURT: I will allow it.

Did Warnock give you any instructions about Samuels?

THE WITNESS: He did not give me instructions. He said that he--

MR. LESCH: Objection.

THE COURT: All right. The answer is no.

THE WITNESS: No.

THE COURT: That's not objected to.

Q Subsequently did you have any meetings with Mr. Finch?

A Oh, yes.

4b/1

gwsg 1 Binns-direct

Q When was the next one?

A The next meeting was in -- I think it was April 27.

Q Where?

A At the Barclay Hotel in Philadelphia.

THE COURT: Do we have to go through all this again?

MR. PENNOYER: I think it's important, your Honor.

THE COURT: All right. There are certain questions of credibility here.

All right, go ahead.

I will await any objection.

Q Who was present at the Barclay Bank meeting?

A Barclay Hotel.

Q Barclay Hotel meeting.

A Mr. Warnock, Mr. Finch and myself.

MR. LESCH: I object to this on the ground it's cumulative.

THE COURT: I will allow it.

Make it as short as you can.

Q Briefly, what was the substance of the conversations between the three of you at that time?

A Discussions of why Armstrong and Thomasville would

make a good combination.

Q All right.

Did you hear the testimony of Mr. Warnock on that subject today --

A I did.

Q -- in court?

A I did.

Q Do you agree substantially with that?

A I do.

Q All right.

Subsequent to the Barclay Hotel meeting in April of '67, Mr. Binns, did you have any further conversations with Mr. Finch?

A Yes.

Q When next?

A Next when we were invited by Mr. Finch to come to Thomasville. I think it was August 24 and 25 of 1967.

Q Who went?

A Mr. Warnock, Mr. Banzhaf and myself.

Q Did you have discussions with Finch at that time?

A We did.

Q In Thomasville?

A In Thomasville, in his office and at his home.

gwsg 3 Binns-direct

Q. Briefly, what was the subject of the conversation there?

MR. LESCH: Same objection, your Honor.

THE COURT: Same ruling.

A Well, again the conversation was Armstrong and Thomasville should get together.

Mr. Finch had also said --

Q Who was saying that? Who said that?

A Armstrong, Warnock, Binns, Banzhaf; Thomasville, Mr. Finch. Mr. Finch had invited us down so that we could meet and be met by his key executives.

He had a cocktail and dinner party at his home, introduced us to his key executives.

Q Right, sir.

Again, how was that meeting left? How was the subject of possible affiliation between Armstrong and Thomasville left at that time?

A It was left that they would have a final discussion and would advise us. We left feeling that this thing was pretty well set.

Q All right.

Did you have a subsequent conversation with Mr. Finch?

A I did.

[429]

gwsg 4 Binns-direct

Q When?

A Sometime in early November Mr. Finch called and talked to me in Mr. Warnock's absence --

MR. LESCH: Same objection, your Honor.

THE COURT: Overruled.

Q What did he say?

A He said that after a great deal of consideration he had decided not to merge at this time.

Q What did you say?

A I said I was very sorry and that I hoped if he reconsidered -- he said he would. He said, if I were to merge with anybody, I would merge with Armstrong. He said, I decided to go it ourselves.

Q After that November phone conversation did you have any other conversations with Mr. Finch?

A I did finally on May 6, 1968.

Q Where?

A At his home -- actually at the airport first in Sea Island, Georgia.

Q Who was present at that time from Armstrong?

A Mr. Banzhaf and his wife and my wife and I were invited down to the Finches.

THE COURT: Off the record.

(Discussion off the record.)

[430]

gwsg 5 Binns-direct

Q How long did you spend down there on that occasion?

Do we have a date yet on that?

A May 6 I think it is.

Q All right.

How long were you down there that time?

A Two days.

Q Two days?

A Yes.

Q Briefly, what was the substance of discussions at that time with Mr. Finch?

MR. LESCH: Same objection.

THE COURT: Same ruling.

A The substance of discussions were then that Mr. Finch had decided that he wanted to merge with Armstrong.

THE COURT: He wanted --

THE WITNESS: To merge with Armstrong.

A (Continuing) We were talking the mechanics of how we were going to go about it.

THE COURT: All right. You don't need to go over that, I guess.

Q When was the next talk you had with Mr. Finch after the May 6 meeting?

A The next talk was when he brought his key people to Sea Island and Mr. Warnock and Mr. Bonzhaf and I went down to make the deal.

Q You heard Mr. Warnock on that subject today?

A That was about June 30.

Q Do you agree in substance with what Mr. Warnock said in describing the discussions at that last meeting?

A I do.

THE COURT: All right.

Q I would like to read to you a few questions and answers from the examination of Mr. Samuels in this trial starting at page 97, line 16. This is Mr. Samuels.

"Q Do you recall on one of the visits before you signed the contract dated August 25, 1966 being brought into Mr. Binns' office by Mr. Donnelly?

"A I might have been. I don't remember exactly. I think he came into the room where we were sitting.

"Q Isn't it a fact that Mr. Binns told you on that occasion that Thomasville was a matter that they would, Armstrong, handle itself, and you were to have no part of it?

"A Absolutely not. I never discussed Thomasville with Mr. Binns, that is, up to the time I wrote him the letter asking for a commission on it.

gwsg 7 Binns-direct

"Q But you say that the word or the name Thomasville was first mentioned by you?

"A That is right.

"Q In the discussions with Armstrong?

"A That is right. I mentioned it at the table in the country club when we had lunch and Mr. Binns didn't react to it at all."

Now, sir, is it true that Mr. Samuels first brought up the name Thomasville in your presence?

MR. LESCH: I object to this.

THE COURT: Let him finish his question.

MR. LESCH: I thought he had finished.

THE COURT: Restate your question, please.

Q Is Mr. Samuels correct in stating that he first brought up the name Thomasville in your presence?

MR. LESCH: I object to this.

A He --

MR. LESCH: I object to this, your Honor.

THE COURT: It's a question as to form. Read the question.

(Question read.)

THE COURT: Sustained as to form.

You may ask him if he did bring it up at this occasion in Sea Island.

[433]

gwsg 8 Binns-direct

MR. PENNOYER: All right, your Honor.

Q Did Mr. Samuels bring up the name Thomasville in this occasion in your presence?

A He did not.

Q And did you?

A Not at the meeting that he's referring to, at the previous meeting. That had been covered at the July 22 meeting.

MR. LESCH: I object to that.

THE COURT: Strike that out. He said it was at a previous meeting.

Q Did Mr. Samuels first bring up the name Thomasville at the previous meeting?

A He did not. I did.

Q To your knowledge, did Mr. Samuels ever arrange any meetings between Armstrong people and Thomasville people?

A No.

MR. PENNOYER: No further questions, your Honor.

THE COURT: Cross.

CROSS EXAMINATION

BY MR. LESCH:

Q Did you say you met Mr. Samuels on July 22, 1966?

A July 22, 1966.

[434]

gwsg 9 Binns-direct

THE COURT: Where was that again?

THE WITNESS: In Lancaster, Pennsylvania, in my office.

Q That was the occasion where you told Mr. Samuels to stay away from Thomasville?

A I told Mr. Samuels the whole set of ground rules under which we would work.

Q Including staying away from Thomasville?

A Including saying that we wanted no help with Thomasville, with Drexall or with Harendon.

Q Isn't it a fact you never met Mr. Samuels until August 10, 1966?

A No. He was in my office on July 22, 1966.

Q Let me show you this letter dated July 18, 1966, and ask you whether you saw this letter --

THE COURT: What exhibit?

MR. LESCH: Exhibit 10 for identification.

Q -- before you met with Mr. Samuels on the 22nd?

A I don't think I have ever seen that letter.

MR. LESCH: May we have this marked for identification, please.

xxx (Plaintiff's Exhibit 22 marked for identification.)

Q I show you Exhibit 22 for identification, Mr. Binns, and I ask you whether you saw that before your

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meeting with Mr. Samuels on July 22.

THE COURT: This, of course, is not in evidence.

A I don't recall it.

Q You never saw this document either?

A I don't recall it.

THE COURT: That leads to a situation where one party or the other might care to offer it in evidence, so that we will know what he is denying.

THE WITNESS: These are not addressed --

THE COURT: Wait.

THE WITNESS: I'm sorry, your Honor.

THE COURT: That's up to counsel.

Go ahead.

MR. LESCH: I don't have any foundation to offer this. I will be happy to show it to Mr. Pennoyer.

(pause.)

THE COURT: You don't have to offer it. It's up to one or the other of you.

MR. PENNOYER: I would object --

THE COURT: All right. You are not offering it.

MR. LESCH: I am not offering it.

THE COURT: All right. That stands as just a paper that is not in evidence.

MR. LESCH: But it has been marked for

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identification, so that the record is clear.

THE COURT: Yes, but that is all. It is not in evidence.

xxx (Plaintiff's Exhibit 23 marked for identification.)

Q I show you Exhibit 23 for identification and I ask you whether you have ever seen this exhibit before?

A I really can't answer it. I don't know whether I have seen it before or not.

Q You have no recollection of that?

A I really don't.

Q I ask you, looking at this exhibit, it doesn't refresh your recollection that you did not meet Mr. Samuels until August 10, 1966?

A We met at Mr. --

THE COURT: The question is solely literally what the question states.

You'd better read it, Mr. Reporter.

(Question read.)

A I met Mr. Samuels on August -- on July 22, 1966.

THE COURT: It doesn't refresh your recollection as to any other date?

THE WITNESS: That's correct.

THE COURT: All right.

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Q Will you tell me how you have arrived at the date of July 22?

THE COURT: How he arrived at it?

MR. LESCH: Yes.

THE COURT: I don't know what that means.

MR. PENNOYER: I object to the form, your Honor.

THE COURT: Sustained.

Q Do you keep a diary, sir?

THE COURT: I don't know how you can ask for the involutions of somebody's mind, counsellor.

Q Do you keep a diary?

A I really do not keep a diary, no.

Q Do you have any note on which the date July 22 appears?

A I have an expense account approved by Mr. Warnock showing that we took Mr. Samuels and Mr. Donnelly and Mr. Warnock and Mr. Binns to lunch on July 22 and we have the check.

Q Do you have that with you?

A Yes, indeed.

MR. LESCH: May we have this marked.

(Plaintiff's Exhibit 24 marked for identification.)

THE COURT: What is next?

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jqe 2 Dinns - cross

Q You mentioned that Mr. Banzhaf had been designated as chairman of the furniture task force?

A He had.

Q Was anybody else part of the furniture task force other than Mr. Banzhaf?

A Mr. Banzhaf was a one-man committee but he used a lot of people within the company.

Q He was the only one that had to do with furniture?

A Correct.

Q Weren't you told prior to the time you met Mr. Samuels that he was a specialist in furniture because he had, among other things, arranged mergers for Mohasco and with the American Furniture Company in 1952?

MR. PENNOYER: Could we break that down, your Honor? Objection to form.

THE COURT: Sustained.

Q Hadn't you been told that Mr. Samuels was a specialist in the furniture industry?

THE COURT: That is the same question.

MR. LESCH: I thought it was sustained as to form.

MR. PENNOYER: Objection.

THE COURT: Sustained.

Q Had you been told Mr. Samuels was a specialist in the furniture industry?

A I don't think so, no.

THE COURT: All right.

Q Had Mr. Schmidt told you that, sir?

A I don't know who Mr. Schmidt is.

Q Don't you know that Mr. Schmidt is an officer with the First National Bank who is the person who referred Mr. Samuels?

THE COURT: I don't know that any such question is relevant.

MR. PENNOYER: Objection.

THE COURT: Objection is sustained.

MR. LESCH: I have nothing else.

THE COURT: Any redirect?

MR. PENNOYER: I would like to offer in evidence Exhibit 24 for identification as Plaintiff's Exhibit 24.

Let me ask one question first, if I may, your Honor.

xx REDIRECT EXAMINATION

BY MR. PENNOYER:

Q Mr. Binns, will you tell us what that is, Exhibit 24?

THE COURT: Just generally, not specifically.

THE WITNESS: It is an expense account.

THE COURT: Covering what days?

jqe 4 Binns - cross

THE WITNESS: July 22, August 3 and August 19.

THE COURT: It may be that it doesn't isolate the 22nd of July.

THE WITNESS: Yes, sir, it does.

THE COURT: Offer it then if you want to.

Any objections?

MR. LESCH: No objections.

THE COURT: Mark it in evidence.

Is that all you want to do on redirect?

MR. PENNOYER: Yes.

THE COURT: You are excused.

(Witness excused.)

xx (Plaintiff's Exhibit 24 received in evidence.)

THE COURT: Anything else?

MR. PENNOYER: I have one matter, regarding the Babbitt matter and that is two pages of Mr. Samuels' deposition.

THE COURT: Let me ask you this: I don't know specifically what these various exhibits on Babbitt show. Can you, Mr. Lesch, tell me generally what they show? I will then be oriented in these things.

MR. LESCH: The first is the March 31, 1967 agreement which I believe is Plaintiff's Exhibit 4 in evidence. That shows, among other things, paragraph 11

shows, that Mr. Samuels was a finder and that Armstrong was obliged to pay the finder's fee.

THE COURT: All right. The question is there anything here that shows the value and the nature of the inventory?

MR. LESCH: Yes.

THE COURT: Which Exhibit is that? Where is that?

MR. LESCH: The following exhibits. There is a distribution agreement entered into about the same time.

THE COURT: What's that number?

MR. LESCH: That is Exhibit 5. Then Exhibits 6, 7, 8 and 9 are transmittal letters which show that Armstrong was paid $104,000 for inventory in addition to the $300,000 purchase price--

THE COURT: Do you concede that these exhibits show payments of $104,000 on inventory, counsellor?

MR. PENNOYER: Yes, sir.

THE COURT: What is the defense on this phase of it?

MR. PENNOYER: Accord and satisfy, secondly, that the contract under which this was paid is not a purchase of assets. It is a separate requirement.

THE COURT: That is as a matter of contract. Does it relate to the contract, the interpretation of the

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jqe 6 Binns - cross

contract?

MR. PENNOYER: It relates back to the other contract but there were two separate contracts.

THE COURT: The other contract, the Babbitt contract.

MR. PENNOYER: The Babbitt contract basically and the one for which we paid the $300,000 is a purchase of tradenames.

THE COURT: What about the trademark purchase? Is there some compensation in the papers for that?

MR. PENNOYER: For that we paid $300,000 and that is the figure.

THE COURT: What you are saying is that the trademarks was in the $300,000 payment?

MR. PLNNOYER: Yes, that was the purchase of assets.

THE COURT: Do you agree to that, counsellor?

MR. LESCH: I agree the 300,000 was for the trademark but the March 31 agreement also refers to inventory.

THE COURT: Don't you know whether that is so or not?

MR. PENNOYER: It is correct, your Honor, it does refer to inventory but it is brought under a separate contract. It was not an acquisition. That is the point. That is the first point.

THE COURT: Was there some agreement shown--

MR. PENNOYER: There is some agreement. What we do agree is that the $107,000 figure represents additional monies we paid for inventory subsequently. We are ready to stipulate as to the amount, the additional amount paid.

THE COURT: Is there any proof you want to offer as to this claim?

MR. PENNOYER: No, your Honor. It is all in there. What I would like to do, we had prepared a memorandum on this--

THE COURT: Is this a law memorandum?

MR. PENNOYER: With these exhibits attached.

THE COURT: Do you want to offer these exhibits?

MR. PENNOYER: No, your Honor. I would like to submit this memorandum to you--

THE COURT: Is it otherwise a law memorandum but with reference to the same exhibits?

MR. PENNOYER: But not by Court numbers. It is maybe in a couple of other papers in there.

THE COURT: You can do that afterwards.

MR. PENNOYER: That is what I would like to do, your Honor.

THE COURT: Do you rest now then?

MR. PENNOYER: I have one matter to read from the

jqe 8 Binns - cross [444]

Samuels deposition.

THE COURT: Read it.

Is this from some deposition?

MR. PENNOYER: Yes. This is from a deposition of Mr. Samuels taken on February 2, 1971 starting at page 116. I first directed the attention of Mr. Samuels to an exhibit which is marked for identification which I am not going to put in evidence but I directed his attention to this in it.

"I direct your attention to the last paragraph.

"Answer. Yes.

"Question. With regard to the Babbitt matter, I will be expecting a call from you later this week. I feel quite sure in spite of the difference in the interpretation in our letter of agreement a mutually satisfactory conclusion can be found."

"Do you know what he, and he was Donnelly was talking about--"

MR. LESCH: I object to the question.

THE COURT: I don't remember the relevancy.

MR. PENNOYER: It establishes a dispute as to the amount owed.

THE COURT: You don't need to prove that. That is evidence, isn't it?

MR. PENNOYER: I believe it is.

jqe 9

THE COURT: You oppose this claim, don't you?

MR. PENNOYER: This is Mr. Samuels' acknowledging that there was a dispute.

THE COURT: Will you concede that there was a dispute, Mr. Lesch?

MR. LESCH: Samuels can't come today, your Honor, because it is a Jewish holiday.

THE COURT: Will you stipulate that if he came he would testify that there was a dispute? Offer what you want and I will do something about it after I hear it.

I think what you have read you propose only on some basis of some dispute on it. How is that relevant?

MR. PENNOYER: Your Honor, it is one of the elements of accord and satisfy.

THE COURT: All right. I will take it.

MR. LESCH: I also object to the form of the question.

THE COURT: The form of the question is waived by stipulation. I assume it is the same kind of stipulation as in any deposition.

MR. LESCH: This is a misnomer. He is reading from a document not in evidence in this question.

THE COURT: I will offer it. That objection is overruled.

jqe 10

MR. LESCH: He has not offered it yet.

THE COURT: He will, I assume. Otherwise I will strike it.

MR. PENNOYER: The question after reading was

"Question. Do you know what he was talking about

"Answer. Yes.

"Question. What was he talking about?

"Answer. He offered me a fraction of what I was supposed to get according to the agreement.

"Question. When was this?

"Answer. Toward the end of December or the early part of January. Since the matter didn't amount to much I didn't make any deal of it. I just let him have it his way. At least I wanted to let him know what the agreement reads that I am supposed to get.

"Question. Is that the extent of the difference in the interpretation of the letter of agreement that Mr. Donnelly referred to?

"Answer. I don't know of any difference in the interpretation. The agreement is firm and definite on the percentage of commission that I am to get so I have no idea what he is talking about. I didn't even pay any attention to it. I told him I just wanted to get what the agreement said."

jqsg 1 [447]

THE COURT: Have you got the paper marked at the deposition?

MR. PENNOYER: I think we can agree it was marked for identification by the plaintiff.

THE COURT: In this case?

MR. PENNOYER: Yes.

THE COURT: But not offered?

MR. PENNOYER: We objected.

THE COURT: I want it in.

MR. PENNOYER: I want a portion of it in.

THE COURT: Indicate what portion you want in. Why don't you want all of it in?

MR. PENNOYER: Only a portion relates to this.

THE COURT: Is it in quotes?

MR. PENNOYER: I quoted from --

THE COURT: Will you take a pencil or pen and put parenthesis around the part you want to offer.

MR. PENNOYER: We offer in evidence --

THE COURT: Don't read it, show it to counsel. Do you object to that, only the part in parenthesis?

MR. PENNOYER: We circled it in ink.

THE COURT: Why can't you do what I said?

MR. LESCH: I won't object if the whole exhibit

jqsg 2 [448]

is offered. I object to a part of it being offered without the whole thing being put in.

THE COURT: Let me see it.

The first part relates to the Thomasville matter, doesn't it?

MR. PENNOYER: Thomas Pride, your Honor, that is another company.

THE COURT: It relates only to Thomas Pride?

MR. LESCH: Our contention is that it doesn't relate only to --

THE COURT: Let me read it please.

I don't see anything except about Thomas Pride.

MR. LESCH: This relates to the interpretation of Exhibit A which is the finder's fee agreement between Armstrong and Samuels. That illustrated the practice that was supposed to be followed.

If they wanted to exclude Thomasville they should have sent a letter like that Thomas Pride letter.

THE COURT: I will admit the part in the ink circle as Exhibit 15.

xxx (Plaintiff's Exhibit 15 received.)

MR. PENNOYER: I didn't finish the reading of the deposition.

THE COURT: Go ahead. I take it it's about Babbitt?

jqsg 3 [449]

MR. PENNOYER: Yes, your Honor. What I read from the deposition is about that part that was just admitted.

THE COURT: I don't understand that statement.

MR. PENNOYER: When I started to read this portion of the testimony --

THE COURT: Whatever you read is in. Go ahead.

MR. PENNOYER: I quoted that in a preliminary question to Mr. Samuels, and I continued.

THE COURT: Read it.

MR. PENNOYER: The top of page 117 of the deposition, line 2:

"Q Had you any telephone conversation with Mr. Donnelly prior to your receipt of this letter -- that is now 15 in evidence -- or personal conversation in which you had discussed any difference in interpreting the letter of agreement?

"A I had many conversations with him but there were no discussions with respect to a difference in interpreting the letter of agreement.

"Q Prior to your receipt of this letter then in your mind --"

THE COURT: What letter are we talking about?

MR. PENNOYER: That portion of the one your

jqsg 4 [450]

Honor admitted.

"In your mind you had no differences with Mr. Donnelly in interpreting the letter of agreement?

"A No, except he said I should get a third or a quarter of what the letter of agreement says.

"Q That was --"

THE COURT: I am confused.

Is this the discussion about Babbitt or is it about --

MR. PENNOYER: All together Babbitt, your Honor.

THE COURT: Go ahead.

MR. PENNOYER: It goes on:

"This was the difference that Mr. Donnelly was referring to in the letter of January 4, 1967" and that is the one that is now Exhibit 15, theportion circled.

THE COURT: Go ahead.

MR. PENNOYER: "Answer Yes, that is right."

That concludes the reading of the Samuels' deposition.

MR. LESCH: I have additional matters to read, your Honor.

THE COURT: Deposition?

MR. LESCH: Yes.

jqsg 5 [451]

Page 119 of the deposition.

THE COURT: This is still whose deposition?

MR. LESCH: Mr. Samuels' deposition.

THE COURT: All right.

MR. LESCH: "Q Did you call Mr. Donnelly later that week?

"A The week of January 4, 1967, yes, probably.

"Q Do you recall the phone call?

"A I don't recall the particular phone call but I must have talked to him that week several times because it was the week I was going to Chicago on the Thomasville deal.

"Q Do you recall any phone discussions that week with Mr. Donnelly with respect to the Babbitt matter?

"A Yes.

"Q What do you recall in conversation?

"A He called me and told me he wanted to pay me less than the percentage that the agreement specified.

"Q How much less?

"A 2/3 less. He said that the deal amounted to $300,000 and he thinks I should get $300,000. I said No --"

THE COURT: That is about the base amount. It isn't anything that relates to this inventory, is it?

MR. LESCH: That is the point I am making. That

appears in this deposition. I want that on the record.

THE COURT: Of course, objections may be made to the relevancy of questions on a deposition even though you may be barred from objections as to form. That is all you want to do?

MR. LESCH: I would like to finish the reading.

"I said no, I want to get what my agreement specifies whether it's a small deal or a large deal, it's one out of many I am working on and I want to get what I am entitled to percentagewise."

THE COURT: The gist of this, of course, is that Samuels didn't want to take what was offered and so forth, isn't it?

MR. LESCH: The relevance of this is as follows: They claim that this conversation followed by Samuels' acceptance of a check constituted an accord and satisfaction. This dispute that they are referring to was a dispute as to whether Samuels was entitled to one per cent or three per cent. Samuels testified in this case at page 15 of the record that it was only after he received the $9,000 check that he learned for the first time that the purchase price of that agreement was more than $300,000.

THE COURT: I understand your contention.

jqsg 7 [453]

MR. LESCH: That is our contention.

THE COURT: Anything else?

MR. LESCH: I have one more matter, your Honor.

THE COURT: What is that?

MR. LESCH: I renew our motion to strike Exhibits I, J, K and L on the ground there has been no foundation laid and the only testimony in this case with respect to the source of these exhibits is that the witness, Mr. Warnock, said he didn't know where they came from and he didn't know whether they were from the files --

THE COURT: I will consider it and reserve decision and ask the parties to brief it.

Are you through now?

MR. PENNOYER: Yes, sir --

THE COURT: I am asking Mr. Lesch.

Are you through on cross or whatever it might be?

MR. LESCH: Yes.

THE COURT: Are you through?

MR. PENNOYER: Defendant rests and would like to renew the motion made at the end of the plaintiff's case.

THE COURT: The same motion?

MR. PENNOYER: On the additional grounds that there

jqsg 8 [454]

is absolutely no evidence that Mr. Samuels performed any services under this contract, covered by this contract. Certainly absolutely no credible evidence. His own testimony is that he called or rather that he met Mr. Finch in Chicago which happened to be immediately after Mr. Finch had been to our plant and had been proposed to and, I submit, your Honor, there is absolutely no credible evidence --

THE COURT: That may or may not be true. I am going to reserve at this time, of course.

I want to ask a couple of questions of Mr. Lesch.

Looking at your complaint, paragraph 6, is it claimed that the consideration here to which the agreement, the so-called finder's agreement for short, may attach is $160 million?

MR. LESCH: It's approximately $150 million, your Honor.

THE COURT: Where is the proof?

MR. LESCH: As follows: The finder's fee agreement Exhibit A --

THE COURT: Where is the proof of the amount?

MR. LESCH: The Exhibits 1, 2 and 3. Exhibit 2 which, I believe, is the 10k that was filed with the SEC shows that 1,909,043 shares of common stock were issued.

jqsg 9

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It also shows that the effective closing date of themerger was November 1, 1968.

THE COURT: Does it show the amount?

MR. LESCH: Exhibit 3 -- first we have 1,000,009 shares of common stock, your Honor, then we have the New York Stock Exchange, the sheets from the New York Times which show the closing price of Armstrong on November 1968 was 78 1/8.

THE COURT: That comes out to how much?

MR. LESCH: 1,909,043 shares times 78 1/8 comes to $149,143,984.

THE COURT: Do you agree with those figures, counsellor?

What I am puzzled about is this paragraph 7.

MR. PENNOYER: $149,143,984?

MR. LESCH: Yes.

MR. PENNOYER: We don't agree there has been any proof on the damages sufficient to support any damage testimony but we agree that is the figure.

THE COURT: I am trying to find out what the proof from the plaintiff is. Obviously if there is insufficient proof of compliance with the contract or something of that sort how can plaintiff recover? I don't understand why this number 7 was thrown in. Is that just a surplusage or

jqsg 10

some kind of pipe dream? [456

MR. LESCH: The agreement, Exhibit A, refers to three per cent.

THE COURT: You don't claim any four million.

MR. LESCH: Three per cent of the purchase price

THE COURT: That is all you claim, three per cent of what has just been stated to be the value of the stock, is that right?

MR. LESCH: Not quite, your Honor. I didn't have a chance to finish.

THE COURT: It was agreed that the value of the stock was 149,000,000, is that it?

MR. LESCH: That was the value of the common stock.

THE COURT: What is there in the proof of this which shows completely the basis of the claim as far as the base amount is concerned? If it isn't in -- I don't know what you are going to do but what have you done already?

MR. LESCH: It's already in the papers before your Honor.

THE COURT: What is the proof?

MR. LESCH: First of all, the fact that 1,909,043 shares of common stock were issued appears in the

jqsg 11 [457]

10k which I believe is Exhibit 2 in evidence. Secondly, the fact that the closing date of the merger was November 1, 1968 also appears in the 10k which is Exhibit 2 in evidence.

Thirdly, the fact that the closing price for the Armstrong common stock on the New York Stock Exchange was 78 1/8 appears from the New York Times' quotation, price quotations, which is Exhibit 3 in evidence.

The contract provides that the plaintiff's commission should be three per cent of the purchase price and it also provides that it's based on the value of the stock issued based on the closing price on the New York Stock Exchange.

THE COURT: That is all there is.

MR. LESCH: That is what it is.

THE COURT: You say that is adequate?

MR. LESCH: Yes. In addition to that --

THE COURT: Are there any other claims besides that?

MR. LESCH: Yes.

THE COURT: What is the other claim and the basis?

MR. LESCH: If I may complete on this point, and it will be one minute more, I recognize we have taken the Court's time on this and I want to make it as fast as

jqsg 12

I can.

THE COURT: I want to be certain on what generally has been submitted.

MR. LESCH: In addition, your Honor, the 10k which is Exhibit 2 in evidence shows that there were 100,000 shares preferred stock issued in connection with the merger. Those shares were not listed on the New York Stock Exchange. In calculation of damages what we have done is taken the conversion price of the preferred into the common which was approximately 1.2. So based on that conversion price 100,000 shares of preferred stock were worth at least $781,250 and that is how we get the total damages.

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gawe 1

THE COURT: It is the sum of the two and against that applied the three per cent?

MR. LESCH: Yes, that's exactly right.

In addition to this, your Honor--

THE COURT: You have another item?

MR. LESCH: Yes. I want to say that the Court is not in the position where it has to either award Mr. Samuels four and a half million dollars or award Mr. Samuels nothing at all because there is a claim for quantum meruit.

In other words, if the Court finds that Mr. Samuels was the first person who suggested the idea of the Thomasville merger and if the Court further finds that Mr. Samuels did work on that, did make certain efforts along that line and that his services were worth something, the Court can find, can award Mr. Samuels an amount based on the Court's appraisal of the reasonable value of his services.

In addition to that, your Honor, there is a further point. The agreement provides that it cannot be cancelled in bad faith by Armstrong.

THE COURT: Yes, I realize that.

MR. LESCH: Of course, as your Honor knows better than I do, that is also a matter of common law, that is that a party to an agreement cannot make it possible.

gawe 2 [460]

If the Court further finds on the third theory that this agreement was cancelled by Armstrong in bad faith, there again the Court could award reasonable damages up to and including four and a half million dollars, but it is not obliged--

THE COURT: For services up to that point?

MR. LESCH: Yes.

THE COURT: But not subsequent to that point?

MR. LESCH: Not only for services, but for the damage to Samuels for not being able to carry out the agreement.

THE COURT: I don't know whether there's anything there except the value of the services or performance of the contract. I don't know what you are talking about, damages of any other kind.

None has been proved.

MR. LESCH: Those would be the two theories, your Honor.

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bgwsg 1

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THE COURT: All right.

Do you want to say anything about these statements? Just generally. I want to get a bird's eye view.

MR. PENNOYER: Very generally, your Honor, our basic position is that the contract doesn't apply to Thomasville. Thomasville was excluded from the contract from the very beginning.

Secondly, Thomasville was never found negotiated or consummated by this plaintiff as the contract requires. In other words, he didn't suggest the name first, he didn't arrange a negotiation, any meeting for us, he didn't do anything, by his own admission.

Thirdly, we say as to the quantum meruit claim, that is precluded by the contract and precluded by the law of New York which says there must be an agreement, in the case of a finder's contract, an express agreement.

THE COURT: Stop there a moment.

Where was the contract consummated? Pennsylvania, wasn't it?

MR. PENNOYER: It was signed in Pennsylvania.

THE COURT: Which law applies or is the law the same in both states?

MR. PENNOYER: We say it's the same in both

gwsg 2 [462]

states, and we have submitted some cases to your Honor in the trial memorandum.

THE COURT: You submitted some New York and some Pennsylvania cases, as I recall it.

MR. PENNOYER: Yes.

THE COURT: Do you agree, Mr. Lesch, that the two are the same, that is the two states?

MR. LESCH: I believe it is the same, yes, and that --

THE COURT: All right. New York State cases might be applicable.

MR. LESCH: Yes. Certainly, your Honor, there is no law that I am aware of that says that because there is a written contract a party is precluded from claiming on the basis of quantum meruit.

THE COURT: Anything else before I fix the time for papers?

Generally speaking, Mr. Pennoyer.

MR. PENNOYER: My point was that not that it has to be a written contract, but there has to at least be an agreement between the parties in order to entitle the finder to a fee.

THE COURT: You may be right. I will consider your cases. Obviously I have to first determine the facts.

gwsg 3 [463]

You have the papers, I presume, with respect to post-trial submissions, don't you?

I would like to have the date fixed as early as possible, Mr. Lesch.

Can you do it in one week?

MR. LESCH: Your Honor, I am in a difficult situation because in order to try this case I obtained an adjournment of a trial in the State Court, which is going to be resumed tomorrow.

THE COURT: How long are you going to be there?

MR. LESCH: The Judge just adjourns it from time to time. I don't know how long.

THE COURT: You can have somebody else there.

MR. LESCH: I am going to be there certainly tomorrow, your Honor.

THE COURT: All right. Tell me when as soon as possible.

MR. LESCH: May we have three weeks from the time that we get the transcript?

THE COURT: No, you may have two weeks after you get today's transcript. I assume that will be today.

All right, two weeks.

October 25.

Mr. Pennoyer, can you do it in less than a week?

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gwsg 4

MR. PENNOYER: Thereafter?

THE COURT: Yes.

MR. PENNOYER: Yes, sir.

THE COURT: All right, five days thereafter.

I think counsel with the comparative speed with which this case was tried. The estimate was four days. If it hadn't been probably for the trouble at Bedford yesterday, we would have finished it yesterday.

MR. LESCH: Thank you, your Honor.

MR. PENNOYER: Thank you, your Honor.

THE COURT: Very well.

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WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Frederick Donnelly (Resumed)		360	362	
Maurice John Warnock	365	403		
James H. Binns	415	433	439	

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J	368	374
K	369	374
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Plaintiff		
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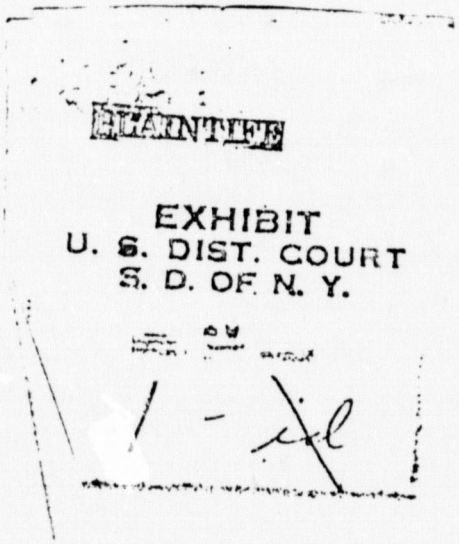
24	437	440
15		448


PLAINTIFF
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

TO THE STOCKHOLDERS
OF ARMSTRONG CORK COMPANY:

At the special meeting of stockholders of the Company to be held on October 14, 1968, there will be submitted to a vote of the stockholders a Joint Plan and Agreement of Merger providing for the merger of Thomasville Furniture Industries, Inc. into this Company. The merger has been approved by unanimous vote of the Boards of Directors of both corporations.

If approved by the stockholders of both corporations, shares of Common Stock of Thomasville Furniture Industries, Inc. upon consummation of the merger will be converted into shares of Common Stock of this Company on the basis of seven-tenths of a share of Common Stock of this Company for each share of Common Stock of Thomasville Furniture Industries, Inc. The $2.375 Convertible Preferred Stock, Series A, $50 Par, of Thomasville Furniture Industries, Inc. will be converted into $2.375 Convertible Preferred Stock of this Company on a share for share basis.

Holders of Common Stock and $3.75 Cumulative Preferred Stock of this Company will continue to hold the same number of shares of Common Stock and $3.75 Cumulative Preferred Stock after the merger.

Thomasville Furniture Industries, Inc. is a highly successful producer of household furniture, traditional, contemporary and modern. The addition of these lines to the business of this Company will provide diversification and a broader market in the household furnishings field. They will complement this Company's lines of resilient flooring, carpeting, ceiling systems and wall paneling.

The merger is more particularly described in the accompanying proxy statement, which includes financial and other information concerning both corporations.

The Board of Directors, after careful consideration, believes that the merger would be beneficial to the stockholders of this Company. It recommends favorable action thereon by the stockholders at the meeting.

JAMES H. BINNS,
President

September 6, 1968

EXHIBIT 1

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Armstrong Cork Company

Lancaster, Pennsylvania

NOTICE OF SPECIAL STOCKHOLDERS' MEETING

To the Stockholders of
Armstrong Cork Company:

A special meeting of the stockholders of Armstrong Cork Company will be held, in accordance with the By-laws of the Company, on Monday, October 14, 1968, at 11:00 o'clock A.M., Eastern Daylight Saving Time, at the principal office of the Company in Lancaster, Pennsylvania, U.S.A., for the purpose of considering and acting upon the following:

1. A Joint Plan and Agreement of Merger dated July 29, 1968, providing for the merger of Thomasville Furniture Industries, Inc. into the Company. Information regarding the proposed merger is contained in the accompanying proxy statement and a copy of the Joint Plan and Agreement of Merger is attached thereto.

2. To transact such other business as may properly come before the meeting.

Only holders of Common Stock of record on the books of the Company at the close of business on August 16, 1968, will be entitled to vote at the meeting.

The enclosed proxy, which is being solicited on behalf of the management of the Company, can be returned in the enclosed envelope, which requires no postage if mailed in the United States.

Albert H. Sheaffer
Vice-President and Secretary

September 6, 1968

EXHIBIT 1

PROXY STATEMENT

This proxy statement is furnished in connection with the solicitation of proxies by the managements of Armstrong Cork Company ("Armstrong") and Thomasville Furniture Industries, Inc. ("Thomasville") for use at special meetings of the shareholders of the respective corporations to be held on October 14, 1968, and at any adjournments thereof.

Only holders of Common Stock of Armstrong of record at the close of business on August 16, 1968, will be entitled to vote at the special meeting of stockholders of Armstrong, each share being entitled to one vote. On that date there were 10,776,161 shares of Common Stock of Armstrong outstanding.

Only holders of $2.375 Convertible Preferred Stock, Series A, $50 Par, and holders of Common Stock of Thomasville of record at the close of business of the principal transfer agent on August 26, 1968, will be entitled to vote at the special meeting of the shareholders of Thomasville, each share being entitled to one vote. On that date there were 100,000 shares of such Preferred Stock and 2,723,790 shares of Common Stock of Thomasville outstanding.

MERGER AGREEMENT

Merger

There will be submitted to a vote of the shareholders at the respective meetings a Joint Plan and Agreement of Merger ("Merger Agreement") dated July 29, 1968, between Armstrong and Thomasville, a copy of which is attached hereto as Exhibit 1. The Merger Agreement provides, among other things, for the merger of Thomasville, a North Carolina corporation, into Armstrong, a Pennsylvania corporation, which will survive the merger and is sometimes hereinafter referred to as the "Surviving Corporation". The Merger Agreement has been approved by unanimous vote at a meeting of the Board of Directors of each of the merging corporations.

The Merger Agreement provides that the name of the Surviving Corporation will be "Armstrong Cork Company", that its corporate existence will continue under the laws of the Commonwealth of Pennsylvania, and that the Articles of Incorporation and the by-laws of Armstrong as they exist immediately prior to the merger becoming effective will be the Articles of Incorporation and by-laws of the Surviving Corporation. Under the Merger Agreement Armstrong is obligated, prior to the effective date of the merger by amendment to its Articles of Incorporation, to establish a series of its Voting Preferred Stock, such series to be designated "$2.375 Convertible Preferred Stock" and to consist of 100,000 shares. For accounting purposes the merger is to be effected on a pooling of interests basis.

Capitalization and Conversion of Shares

When the merger becomes effective, the authorized capital stock of the Surviving Corporation will be 161,821 shares of No Par Preferred Stock, of which 161,522 shares of $3.75 Cumulative Preferred Stock have been established as a series, 1,500,000 shares of Voting Preferred Stock without par value and junior to the No Par Preferred Stock as to dividends and assets, of which 100,000 shares of $2.375 Convertible Preferred Stock will have been established as a series, and 30,000,000 shares of Common Stock of the par value of $1.00 per share.

At the time the merger becomes effective the outstanding shares of Common Stock of Thomasville will be converted forthwith into shares of Common Stock of the Surviving Corporation on the basis of seven-tenths of a share of the Surviving Corporation for each share of Thomasville, and the outstanding shares of $2.375 Convertible Preferred Stock, Series A, $50 Par, of Thomasville will be converted forthwith into shares of $2.375 Convertible Preferred Stock of the Surviving Corporation on a share for share basis. On the assumption that all the shares of Common Stock of Thomasville reserved for purposes of conversion of its shares of $2.375 Convertible Preferred Stock, Series A, $50 Par, and the exercise of its stock options outstanding as of

June 30, 1968 (see Note 4 under "Capitalization") had been issued on that date, the maximum number of shares of Common Stock of Armstrong required to be issued in the merger would be 2,058,745 shares, or approximately 16% of the shares of Armstrong Common Stock outstanding as of June 30, 1968, increased by such 2,058,745 shares.

Holders of $3.75 Cumulative Preferred Stock and Common Stock of Armstrong will continue to hold the same number of shares of $3.75 Cumulative Preferred Stock and Common Stock, respectively, of the Surviving Corporation.

The ratio of one share of $2.375 Convertible Preferred Stock of the Surviving Corporation for one share of $2.375 Convertible Preferred Stock, Series A, $50 Par, of Thomasville and the ratio of seven-tenths of a share of Common Stock of the Surviving Corporation for one share of Common Stock of Thomasville were determined by the respective managements of Armstrong and Thomasville on the basis of a number of factors, including the earnings records and financial condition of the two corporations, the estimated future earnings of the two corporations, the record of dividends and prospects of dividends on the classes of stock of each of the corporations and, in the case of the Common Stock of each of the corporations, the comparative market prices and book values thereof. The respective ratios are deemed by the Boards of Directors of Armstrong and Thomasville to be fair and equitable to the holders of Common Stock and $2.375 Convertible Preferred Stock, Series A, $50 Par, of Thomasville and to the holders of Common Stock of Armstrong. According to information furnished by the directors and officers of Armstrong and Thomasville, as of August 20, 1968, no director or officer of Armstrong owned any securities of Thomasville and no director or officer of Thomasville owned any securities of Armstrong, except that Tom A. Finch, President and a director of Thomasville, owned beneficially 400 shares of Common Stock of Armstrong. Wachovia Bank and Trust Company as trustee for four of his children held 536 shares of such stock on that date.

Fractional Shares

No certificates or scrip representing fractional shares of Common Stock of the Surviving Corporation will be issued, but in lieu thereof the Surviving Corporation will make arrangements on behalf of any person otherwise entitled to a fractional share so that he may sell his fractional interest or buy an additional fractional interest sufficient to make one whole share of Common Stock of the Surviving Corporation. All fractional interests which are not eliminated pursuant to such arrangements within sixty days after the merger shall have become effective will be sold and the proceeds thereof remitted to the stockholders entitled thereto.

Stock Options

Options to purchase shares of Common Stock of Thomasville under employee stock option plans of Thomasville outstanding on the date the merger becomes effective will be converted into options to purchase shares of Common Stock of the Surviving Corporation on the basis of seven-tenths of a share of Common Stock of the Surviving Corporation for each share of Common Stock of Thomasville covered by the respective options. The option price per share of Common Stock of the Surviving Corporation will be one and three-sevenths times the option price per share set forth in such options. All other terms of such options will remain the same. As of June 30, 1968 options to purchase 71,215 shares of Common Stock of Thomasville were outstanding.

Stock Exchange Listings

The Common Stock of Armstrong is listed on the New York Stock Exchange and the Pittsburgh Stock Exchange, and application will be made to those exchanges for the listing of shares of Common Stock to be issued in the merger and issuable upon conversion of the $2.375 Convertible Preferred Stock of the Surviving Corporation issued in the merger or upon the exercise of stock options assumed by the Surviving Corporation in the merger. The $2.375 Convertible Preferred Stock of the Surviving Corporation is not to be listed on any exchange.

Federal Tax Rulings

Applications have been made by Thomasville and Armstrong to the Internal Revenue Service for rulings to the effect that the transactions contemplated by the Merger Agreement constitute a nontaxable reorganiza-

tion under the Internal Revenue Code and as to other tax aspects of such transactions. Reference is made to Sections 6.01(h) and 6.02(d) of the Merger Agreement for a more complete description of the rulings applied for. The obligations of Thomasville and Armstrong to consummate the merger are conditional upon the issuance of favorable rulings.

Anti-Trust Laws

In the opinion of counsel for Armstrong and Thomasville the proposed merger will not violate the anti-trust laws of the United States.

Votes Required

The affirmative vote of the holders of at least a majority of the outstanding shares of Common Stock of Armstrong, the affirmative vote of the holders of at least a majority of the outstanding shares of Common Stock of Thomasville and the affirmative vote of the holders of at least two-thirds of the outstanding shares of $2.375 Convertible Preferred Stock, Series A, $50 Par, of Thomasville, voting as a class, are required for the approval and adoption of the Merger Agreement.

Effective Date of the Merger

The Merger Agreement provides that the merger shall become effective at the time Articles of Merger are filed under the laws of North Carolina and Pennsylvania, provided that if such filings shall not have been made prior to April 1, 1969, the merger shall not be consummated. If the shareholders of both corporations take favorable action on the merger at their respective meetings on October 14, 1968, and favorable tax rulings have been received, it is expected that the merger will become effective on November 1, 1968.

Thomasville Operations

Under the Merger Agreement the Surviving Corporation will transfer the assets and business of Thomasville, subject to its liabilities, to a new wholly-owned subsidiary to be named "Thomasville Furniture Industries, Inc".

Dissenters' Rights

Under Pennsylvania law holders of $3.75 Cumulative Preferred Stock, but not holders of Common Stock, of Armstrong may object to the merger and demand payment for their shares.

Under North Carolina law holders of $2.375 Convertible Preferred Stock, Series A, $50 Par, as well as holders of Common Stock, of Thomasville may object to the merger and demand payment for their shares. Reference is made to page 20 of this proxy statement for the rights of dissenting shareholders of Thomasville. Armstrong is not obligated to consummate the merger if the holders of more than 5% of the Common Stock of Thomasville object to the merger, do not vote in favor thereof and demand the fair value of their shares under North Carolina law.

Conditions Precedent to Consummation of Merger

In addition to the conditions precedent to the consummation of the merger mentioned under the headings "Federal Tax Rulings" and "Dissenters' Rights", reference is made to Sections 6.01 and 6.02 of the Merger Agreement for other conditions precedent to the consummation of the merger.

Abandonment of Merger

At any time prior to the effective date of the merger the Boards of Directors of Armstrong and Thomasville may, by mutual consent, terminate the Merger Agreement.

CAPITALIZATION

The following table sets forth the capitalization of Armstrong and subsidiaries as of June 30, 1968, Thomasville and subsidiaries as of May 31, 1968, and pro forma capitalization after giving effect to the proposed merger.

	Armstrong (000)	Thomasville (000)	Pro forma (000)(1)
DEBT:			
Short-term:			
Notes payable	$ 12,075	$ 3,763	$ 15,838
Current maturities of long-term debt	345	211	556
	12,420	3,974	16,394
Long-term (2)	5,938	471	6,409
TOTAL DEBT	18,358	4,445	22,803
STOCKHOLDERS' EQUITY:			
Preferred stock, $3.75 cumulative, no par value. Authorized 161,821 shares; issued 161,522 shares	16,596	—	16,596
Voting Preferred Stock, no par value. Authorized 1,500,000 shares; issued none, to be issued 100,000 shares, $2.375 convertible series at $50 stated value	—	—	5,000
Preferred stock, $50 par value. Authorized 250,000 shares; issued 100,000 shares, $2.375 Convertible, Series A	—	5,000	—
Common Stock, $1 par value. Authorized 30,000,000 shares; issued 10,778,486 shares, 1,903,895 additional shares to be issued (3)	10,778	—	12,682
Common Stock, $2.50 par value. Authorized 10,000,000 shares; issued 2,719,850 shares (4)	—	6,800	—
Capital surplus	48,804	35	53,735
Retained earnings	216,716	30,521	247,237
LESS TREASURY STOCK, at cost:			
$3.75 Cumulative Preferred Stock—43,343 shares	3,984	—	3,984
Common Stock—7,233 shares	359	—	359
Total stockholders' equity	288,551	42,356	330,907
TOTAL CAPITALIZATION	$306,909	$46,801	$353,710

NOTES:

(1) Upon consummation of the merger, the transaction will be treated as a pooling of interests for accounting purposes. The Merger Agreement contemplates the issuance of one share of Armstrong $2.375 Convertible Preferred Stock for each share of Thomasville $2.375 Convertible Preferred Stock, Series A, $50 Par, and the issuance of seven-tenths of one share of Armstrong Common Stock for each share of Thomasville Common Stock.

(2) Reference is made to Note 4 of Armstrong's Notes to Financial Statements and Note D of Thomasville's Notes to Consolidated Financial Statements for information concerning long-term debt.

(3) 101,572 shares of Armstrong Common Stock were reserved for issuance upon exercise of outstanding stock options and 94,220 were reserved for future options.

(4) 150,000 shares of Thomasville Common Stock were reserved for conversion of $2.375 Convertible Preferred Stock, Series A, $50 Par, 60,760 were reserved for issuance upon exercise of outstanding stock options and 45,240 were reserved for future options. From May 31, 1968 to June 30, 1968, additional options covering 10,455 shares were granted so that as of the latter date 71,215 shares of Common Stock were covered by outstanding options and 34,795 shares were reserved for future options.

ARMSTRONG CORK COMPANY AND SUBSIDIARIES
STATEMENT OF CONSOLIDATED EARNINGS

The following statement of consolidated earnings of Armstrong Cork Company and subsidiaries so far as it relates to the five years ended December 31, 1967 has been examined by Peat, Marwick, Mitchell & Co., independent certified public accountants, whose report, included elsewhere herein, is based in part on the report of other independent certified public accountants. This statement should be read in conjunction with the financial statements and related notes of Armstrong Cork Company and subsidiaries included elsewhere herein. In the opinion of the Company, all adjustments (none of which were other than normal and recurring accruals) necessary to a fair statement of the results of operations for the six-month periods ended June 30, 1967 and 1968, have been included. The results of operations for the six-month period ended June 30, 1968 are not necessarily indicative of the operating results for the entire year.

	Year ended December 31,					Six months ended June 30,	
	1963	1964	1965	1966	1967	1967 (Unaudited)	1968 (Unaudited)
	(000)	(000)	(000)	(000)	(000)	(000)	(000)
Net sales	$390,299	$421,216	$441,499	$455,414	$460,258	$225,328	$234,630
Costs and expenses:							
Cost of goods sold exclusive of depreciation and amortization	248,923	264,054	281,264	298,252	311,563	152,552	155,691
Selling and administrative	67,981	74,303	77,920	89,122	80,635	40,217	43,748
Depreciation and amortization	15,195	15,728	16,145	17,173	19,390	9,506	10,232
Other charges (income)	27	(1,467)	(2,504)	(1,883)	(652)	(861)	(710)
	332,126	352,618	372,825	393,664	410,936	201,414	208,961
Earnings before income taxes	58,173	68,598	68,674	61,750	49,322	23,914	25,669
Federal and foreign income taxes							
Current:							
Federal	27,321	29,404	29,039	24,819	20,547	10,136	11,852
Foreign	2,197	3,381	1,693	1,012	972	295	377
Deferred	899	1,549	1,552	3,620	481	713	371
	30,417	34,334	32,284	29,451	22,000	11,144	12,600
Net earnings	27,756	34,264	36,390	32,299	27,322	12,770	13,069
Dividends on preferred stock	606	606	583	458	444	222	222
Net earnings applicable to Common Stock	$ 27,150	$ 33,658	$ 35,807	$ 31,841	$ 26,878	$ 12,548	$ 12,847
Per share of Common Stock:							
Net earnings (2)	$2.59	$3.18	$3.36	$2.97	$2.50	$1.17	$1.19
Cash dividends (3)	1.05	1.25	1.37½	1.40	1.40	.60	.70

NOTES:

(1) The above statement of consolidated earnings includes, for all periods, the accounts of foreign subsidiaries and of E & B Carpet Mills, Inc., which was acquired in 1967 and accounted for as a pooling of interests. Net sales and net earnings of E & B Carpet Mills, Inc., for the years 1963-1966 included in the above statement are as follows:

Year ended December 31,	Net sales	Net earnings
1966	$24,422,751	$985,328
1965	24,201,462	798,429
1964	15,949,676	489,260
1963	9,882,028	231,040

Amounts of E & B Carpet Mills, Inc., are included in 1963, 1964, and 1965 based on fiscal years ended March 31, 1964, March 31, 1965, and March 31, 1966 respectively; amounts included in 1966 are for the year ended December 31, 1966.

For further information see note 1 of notes to financial statements.

(2) Earnings per share of Common Stock are based on the average of shares outstanding during the respective periods adjusted for a two-for-one split in 1964 and shares issued in the acquisition of E & B Carpet Mills, Inc.

(3) Includes only cash dividends paid by Armstrong Cork Company.

Earnings during 1966, particularly in the latter half of the year, and 1967 were adversely affected by several restricting factors. The sluggish market for new residential construction and the relative weakness of the automotive industry had an impact on sales. Also contributing to the decline in earnings were start-up costs required to bring major new manufacturing facilities on stream and, despite continuing emphasis on expense control, increased unit labor costs occasioned by a generally advancing wage and salary scale. During the first six months of 1968, principally as the result of some recovery in the home-building industry, sales of resilient flooring and building products (including those for mobile homes) showed improvement. The tufted carpet business and foreign operations also showed gains. Among the major factors limiting earnings improvement, in addition to the 10% federal income tax surcharge, were start-up costs at the indoor-outdoor carpet plant and the 51-day strike of the glass container industry.

THOMASVILLE FURNITURE INDUSTRIES, INC. AND SUBSIDIARIES

STATEMENT OF CONSOLIDATED EARNINGS

The following Statement of Consolidated Earnings of Thomasville Furniture Industries, Inc. and subsidiaries for the three years ended November 30, 1967, has been examined by Ernst & Ernst, independent accountants, whose report is based in part on reports of other public accountants as set forth in such report included elsewhere in this proxy statement. The statements of Thomasville Furniture Industries, Inc. and subsidiaries for the years ended in 1963 and 1964 have not been reported upon and the statements for the periods of six months ended May 31, 1967, and May 31, 1968, have not been examined by independent accountants; however in the opinion of the management of Thomasville, all adjustments (comprising only normal recurring accruals) necessary for a fair presentation of results of operations for those periods have been made. The results of operations for the period of six months ended May 31, 1968, are not necessarily indicative of the results for the year ending November 30, 1968. Insofar as the following statement relates to the three years and six months ended May 31, 1968, it should be read in conjunction with the other financial statements and notes thereto, appearing elsewhere in this proxy statement.

	Year Ended November 30,					Six Months Ended May 31,	
	1963 (Not Reported Upon)	1964 (Not Reported Upon)	1965	1966	1967	1967 (Unaudited)	1968 (Unaudited)
Net sales	$54,131,903	$62,657,463	$69,920,094	$75,147,761	$73,779,042	$35,088,752	$39,258,399
Cost of products sold	40,515,597	44,704,894	48,874,352	53,499,649	53,123,095	25,685,304	28,117,207
	13,616,306	17,952,569	21,045,742	21,648,055	20,655,947	9,403,448	11,141,183
Selling, administrative, and general expenses	7,137,851	8,209,497	8,958,926	9,520,419	10,072,827	5,072,731	5,600,896
	6,478,455	9,743,072	12,086,816	12,027,636	10,583,120	4,330,717	5,540,287
Other income	125,048	90,073	197,083	180,161	104,124	62,811	45,357
	6,603,503	9,833,145	12,283,899	12,207,797	10,687,244	4,393,528	5,585,644
Other deductions:							
Interest expense	53,376	53,428	36,271	38,936	176,573	75,953	81,760
Miscellaneous	342,026	102,883	61,969	65,513	102,974	60,015	61,233
	395,402	156,311	98,240	104,449	279,547	135,968	142,993
	6,208,101	9,676,834	12,185,659	12,103,348	10,407,697	4,257,560	5,442,651
Provision for taxes on income	3,348,168	4,911,497	6,120,016	5,726,953	5,172,500	2,186,590	2,999,202
NET EARNINGS	$ 2,859,933	$ 4,765,337	$ 6,065,643	$ 6,376,395	$ 5,235,197	$ 2,070,970	$ 2,443,449
Dividend requirement on preferred stock (1)	$ 237,500	$ 237,500	$ 237,500	$ 237,500	$ 237,500	$ 118,750	$ 118,750
Net earnings applicable to Common Stock	2,622,433	4,527,837	5,828,143	6,138,895	4,997,697	1,952,220	2,324,699
Earnings per share of Common Stock:							
Assuming no conversion of preferred stock (2)	$ .99	$1.71	$2.18	$2.27	$1.84	$.72	$ 86
Assuming full conversion of preferred stock (3)	1.03	1.70	2.14	2.23	1.83	.72	.85
Cash dividends per share of Common Stock (4)	.35	.45	.65	.70	.725	.35	.40

NOTES:

(1) Allowance for dividends on $2.375 Convertible Preferred Stock, Series A, $50 Par, issued on April 2, 1968, in acquisition of Caldwell Furniture Company, accounted for as a pooling of interests.

(2) Based on the average number of shares outstanding during the period after giving effect to a two-for-one stock split in May, 1964, and retroactive effect to shares issued in acquisitions during the period and after deducting dividend requirements on the preferred stock.

(3) Based on the average number of shares of Common Stock outstanding during the period plus the number of such shares which would result from conversion of the preferred stock.

(4) Based on historical cash dividends of Thomasville Furniture Industries, Inc., adjusted for the two-for-one split in May, 1964.

The decline in sales and earnings in 1967 compared with 1966 was due to the general economic conditions which affected the furniture industry during most of the year.

ARMSTRONG CORK COMPANY AND SUBSIDIARIES AND THOMASVILLE FURNITURE INDUSTRIES, INC. AND SUBSIDIARIES

PRO FORMA COMBINED SUMMARY OF EARNINGS

The following pro forma combined summary of earnings represents a combination, on a pooling of interests basis, of the statements of Armstrong Cork Company and subsidiaries for the five years ended December 31, 1967, and the six-month periods ended June 30, 1967, and June 30, 1968, and Thomasville Furniture Industries, Inc. and subsidiaries for the five years ended November 30, 1967, and the six-month periods ended May 31, 1967 and May 31, 1968, giving effect to the proposed merger as if it had been accomplished in the periods indicated. This summary should be read in conjunction with the financial statements and notes thereto of the respective companies which appear elsewhere in this proxy statement.

	Year ended					Six months ended (Unaudited)	(Unaudited)
	Armstrong December 31, 1963 / Thomasville November 30, 1963	Armstrong December 31, 1964 / Thomasville November 30, 1964	Armstrong December 31, 1965 / Thomasville November 30, 1965	Armstrong December 31, 1966 / Thomasville November 30, 1966	Armstrong December 31, 1967 / Thomasville November 30, 1967	Armstrong June 30, 1967 / Thomasville May 31, 1967	Armstrong June 30, 1968 / Thomasville May 31, 1968
	(000)	(000)	(000)	(000)	(000)	(000)	(000)
Net sales	$444,431	$483,873	$511,419	$530,562	$534,037	$260,419	$273,888
Cost of goods sold and selling and administrative expenses	379,753	406,999	433,162	458,667	474,784	233,035	243,388
Operating profit	64,678	76,874	78,257	71,895	59,253	27,384	30,500
Other income (charges)	(297)	1,401	2,603	1,958	477	788	612
Earnings before income taxes	64,381	78,275	80,860	73,853	59,730	28,172	31,112
Income taxes	33,765	39,246	38,404	35,178	27,173	13,331	15,599
Net earnings	30,616	39,029	42,456	38,675	32,557	14,841	15,513
Dividends on preferred stocks (2)	844	843	821	695	681	341	341
Net earnings applicable to Common Stock	$ 29,772	$ 38,186	$ 41,635	$ 37,980	$ 31,876	$ 14,500	$ 15,172
Net earnings per share of Common Stock (1 and 3)	$ 2.42	$ 3.07	$ 3.32	$ 3.01	$ 2.52	$ 1.15	$ 1.20

NOTES:

(1) Amounts per share are based on the average number of shares of Armstrong Common Stock (adjusted for stock splits and acquisitions) that would have been outstanding during each period after giving retroactive effect to the proposed merger with Thomasville.

(2) Dividends on preferred stocks includes the dividend requirement on the $2.375 Convertible Preferred Stock of Armstrong to be issued in exchange for Thomasville preferred stock under the proposed merger, and includes the dividends paid on Armstrong $3.75 Cumulative Preferred Stock.

(3) Assuming conversion of $2.375 Convertible Preferred Stock of Armstrong and exercise of all Thomasville and Armstrong options outstanding, the dilution of earnings per share would not be material.

ARMSTRONG CORK AND SUBSIDIARIES AND THOMASVILLE FURNITURE INDUSTRIES, INC. AND SUBSIDIARIES

PRO FORMA COMBINING BALANCE SHEET

ASSETS

	Armstrong June 30, 1968 (Unaudited)	Thomasville May 31, 1968 (Unaudited)	Pro Forma Adjustments (Note A)	Pro Forma Combined
	(000)	(000)	(000)	(000)
Current assets:				
Cash	$ 11,230	$ 2,407	$—	$ 13,637
Marketable securities	2,301	42	—	2,343
Receivables—net	57,216	10,673	—	67,889
Inventories	74,809	18,604	—	93,413
Other current assets	3,345	318	—	3,663
Total current assets	148,901	32,064	—	180,965
Property, plant and equipment	363,749	31,873	—	395,622
Less provision for depreciation and amortization	148,475	12,964	—	161,439
	215,274	18,909	—	234,183
Deferred charges and other assets	2,939	382	—	3,321
	$367,114	$51,355	$—	$418,469

LIABILITIES AND STOCKHOLDERS' EQUITY

Current liabilities:				
Notes payable	$ 12,075	$ 3,763	$—	$ 15,838
Current installments on long-term debt	345	211	—	556
Accounts payable	20,956	1,469	—	22,425
Accrued expenses	16,148	2,137	—	18,285
Federal and foreign income taxes	7,665	853	—	8,518
Total current liabilities	57,189	8,433	—	65,622
Provision for deferred compensation	—	95	—	95
Long-term debt, less current installments	5,938	471	—	6,409
Deferred Federal income taxes and investment credit	15,436	—	—	15,476
Stockholders' equity:				
Preferred stock, $3.75 cumulative, no par value. Authorized 161,821 shares; issued 161,522 shares	16,596	—	—	16,596
Voting Preferred Stock of Armstrong, no par value. Authorized 1,500,000 shares; issued none, to be issued 100,000 shares, $2.375 convertible series at $50 stated value	—	—	5,000	5,000
Preferred stock, $50 par value. Authorized 250,000 shares; issued 100,000 shares, $2.375 Convertible Preferred Stock, Series A	—	5,000	(5,000)	—
Common Stock, $1 par value. Authorized 30,000,000 shares; issued 10,778,486 shares, 1,903,895 additional shares to be issued	10,778	—	1,904	12,682
Common Stock, $2.50 par value. Authorized 10,000,000 shares; issued 2,719,850 shares	—	6,800	(6,800)	—
Capital surplus	48,804	35	4,896	53,735
Retained earnings	216,716	30,521	—	247,237
	292,894	42,356	—	335,250
Less treasury stock, at cost:				
$3.75 Cumulative Preferred Stock—43,343 shares	3,984	—	—	3,984
Common Stock—7,233 shares	359	—	—	359
Total stockholders' equity	288,551	42,356	—	330,907
	$367,114	$51,355	$—	$418,469

NOTES:

(A) The pro forma combining balance sheet has been prepared on a pooling of interests basis using the balance sheet of Armstrong as of June 30, 1968 and the balance sheet of Thomasville as of May 31, 1968, giving effect to the proposed merger. The pro forma adjustments give effect to the proposed issuance of 100,000 shares of Armstrong's $2.375 Convertible Preferred Stock in exchange for 100,000 shares of Thomasville's $2.375 Convertible Preferred Stock, Series A, $50 Par, and the issuance of 1,903,895 shares of Armstrong's Common Stock in exchange for the 2,719,850 shares of Thomasville's Common Stock.

(B) No provision has been made herein for any expenses in connection with the proposed merger. Such expenses will be charged to capital surplus when incurred.

(C) The pro forma combining balance sheet should be read in conjunction with the financial statements and notes thereto of the respective companies appearing elsewhere in this proxy statement.

[8]

EXHIBIT 1

COMPARATIVE DATA

The following table sets forth comparative per share amounts relating to earnings before merger, pro forma earnings and cash dividends of Thomasville and Armstrong. The pro forma combined amounts are based on the assumption that the proposed merger was an accomplished fact in the periods indicated.

	Year (note 1)					Six months (note 1)	
	1963	1964	1965	1966	1967	1967	1968
Thomasville—per share of Thomasville Common Stock (note 2):							
Earnings before merger:							
Assuming no conversion of preferred stock	$ .99	$1.71	$2.18	$2.27	$1.84	$ .72	$ .86
Assuming full conversion of preferred stock (note 3)	1.03	1.70	2.14	2.23	1.83	.72	.85
Pro forma combined earnings per seven-tenths of one share of Armstrong Common Stock (notes 2, 4 and 5)	1.69	2.15	2.32	2.11	1.76	.81	.84
Cash dividends (note 6)	.35	.45	.65	.70	.72½	.35	.40
Armstrong—per share of Armstrong Common Stock (note 2):							
Earnings before merger	2.59	3.18	3.36	2.97	2.50	1.17	1.19
Pro forma combined earnings per share of Armstrong Common Stock (notes 2, 4 and 5)	2.42	3.07	3.32	3.01	2.52	1.15	1.20
Cash dividends (note 6)	1.05	1.25	1.37½	1.40	1.40	.60	.70
Cash dividends per seven-tenths of one share of Armstrong Common Stock	.73½	.87½	.95¾	.98	.98	.42	.49

The following table shows the actual and pro forma book value per share of Common Stock of Thomasville at May 31, 1968 and Common Stock of Armstrong at June 30, 1968:

	Thomasville	Armstrong
Actual—before merger	$13.73	$25.66
Pro forma—based on shares of Common Stock of Armstrong to be outstanding upon merger (seven-tenths of a share as to Thomasville; one share as to Armstrong)	$17.33	$24.75

NOTES:

(1) Thomasville data are for the five years ended November 30, 1967 and six-month periods ended May 31, 1967 and 1968. Armstrong data are for the five years ended December 31, 1967 and six-month periods ended June 30, 1967 and 1968.

(2) The number of shares of Thomasville Common Stock on which the above per share data are predicated is the average number of shares of stock outstanding during each period after giving effect to a two-for-one stock split in 1964, and retroactive effect to shares issued in acquisitions during the periods. The number of shares of Armstrong Common Stock on which the above per share data are predicated is the average of shares outstanding during the respective periods adjusted for a two-for-one split in 1964 and retroactively adjusted for the acquisition of E & B Carpet Mills, Inc. in 1967.

(3) Based on the average number of shares of Common Stock of Thomasville outstanding during each period plus the number of shares of Common Stock which would result from conversion of Thomasville preferred stock.

(4) In the proposed merger, Thomasville shareholders will receive seven-tenths of one share of Armstrong Common Stock for each share of Thomasville Common Stock.

(5) Dilution of pro forma combined earnings per share would be less than 1¢ in any period, assuming full conversion of preferred stock.

(6) Historical cash dividends adjusted for a two-for-one stock split in 1964.

COMPARATIVE MARKET PRICES

The Common Stock of Armstrong is listed on the New York Stock Exchange and the Pittsburgh Stock Exchange and the Common Stock of Thomasville is listed on the New York Stock Exchange. The $2.375 Convertible Preferred Stock, Series A, $50 Par, of Thomasville was issued on April 2, 1968, to ten persons and is not traded on any market. The following table shows the reported high and low prices per share of the Common Stock of Armstrong and the Common Stock of Thomasville on the New York Stock Exchange for the periods indicated:

	Armstrong Common Stock		Thomasville Common Stock	
	High	Low	High	Low
1966				
First Quarter	61½	49	34⅜	26¼
Second Quarter	58⅜	49¼	28⅛	20½
Third Quarter	55½	42⅛	22⅛	15⅜
Fourth Quarter	54⅜	40	17⅜	15
1967				
First Quarter	59½	46½	23⅞	16⅝
Second Quarter	60¾	49	26¾	20
Third Quarter	59⅝	49½	31	24¼
Fourth Quarter	58¾	47¾	35⅝	29½
1968				
First Quarter	62¾	51⅝	34⅜	30⅞
Second Quarter	74	63⅞	42¼	34¾
Third Quarter (Through August 26)	81	73⅛	53	38⅜

On August 26, 1968, the reported closing prices per share of the Common Stock of Armstrong and the Common Stock of Thomasville on the New York Stock Exchange were 78¾ and 51¾, respectively.

BUSINESS AND PROPERTIES OF ARMSTRONG

Products

Armstrong, whose principal office is located in Lancaster, Pennsylvania, has for many years been a leading producer in the United States of building products of various types and its name is well known in the trade and to consumers. It produces resilient floor coverings and carpets, ceilings and many other products for the building industry, as well as products for general industrial use and for packaging. Sales of products to the building industry generally represent about two-thirds of the dollar sales of Armstrong and its domestic subsidiaries, of which about one-half are sales to the residential building industry and about one-half to the non-residential building industry. The remaining one-third consists of industry, packaging and other products.

Building Products. Armstrong's resilient floor coverings consist of a wide range of types, grades and designs, which are constantly being changed and improved. They include coverings made of plastics, linseed oil (linoleum), asphalt, asbestos, felt and other materials, including coverings with a soft foam backing. Carpets of tufted synthetic fiber are made by E & B Carpet Mills, Inc., a subsidiary acquired late in 1967. Armstrong began the manufacture of indoor-outdoor carpets in 1968.

Armstrong's other building products include acoustical and nonacoustical ceilings, of wood fiber and mineral fiber, and various other types of fiberboard, including siding, roof insulation and building board. Armstrong has recently started the manufacture and sale of interior paneling made from wood fiber.

Armstrong's building products are sold to floor covering wholesalers, carpet retailers, building supply wholesalers, acoustical contractors and directly to the prefabricated and mobile homes industries. A subsidiary

is engaged in the contract installation of a variety of insulating materials made by Armstrong and others, primarily in commercial, institutional and industrial buildings.

Industry, Packaging and Other Products. The products sold for industrial use include foamed plastic and fibrous glass insulating materials, insulating fire brick, cots, aprons and other products for the textile industry and gaskets, adhesives and other products for the automotive, appliance and air conditioning industries. They are sold principally by Armstrong salesmen direct to manufacturers and fabricators.

In the packaging field Armstrong makes and sells food, beverage, drug and cosmetic bottles and other glass and plastic containers of various types. It makes and sells crown caps, including a new turn-off crown, and other metal and plastic closures. Such products, many of them being custom designed and brand labeled, are sold by its own salesmen, principally to manufacturers and bottlers.

Since 1962 Armstrong has manufactured and sold, principally through supermarkets, several consumer products for floor care. It distributes two household cleaning products made by others.

Competition

There is active competition in the sale of all classes of products made by Armstrong. There are a number of companies engaged in manufacturing each class of products made by it, although no one company makes all such classes.

Raw Materials

Some of the principal raw materials used in the manufacture of Armstrong's products are synthetic resins and fibers, pigments and dyes, pulpwood, mineral and asbestos fiber, tinplate and soda ash, but it uses a wide variety of other materials. Some of the pulpwood requirements of its fiberboard plants are supplied from its timberlands. Armstrong also purchases substantial amounts of packaging materials for the packaging and shipment of its various products. All of the raw materials used by Armstrong are presently available in sufficient quantity to meet its requirements.

Research and Advertising

Research and development of new products and advertising are important in assisting Armstrong to carry on and improve its business. Research and development activities are now conducted principally at Armstrong's Research Center near Lancaster, Pennsylvania, with a staff of several hundred employees, including approximately 225 with professional degrees. Advertising is carried on principally by television, in consumer magazines with nationwide circulation and in trade journals and other publications.

Employees

Armstrong and its domestic subsidiaries have approximately 17,700 employees. Most hourly employees are represented by labor unions having national affiliations. In the United States, the only strikes or work stoppages in the last three years resulting in material interruption of production were a ten-day strike at the Fulton Plant in August 1966, a strike of over three months at the Braintree Plant in the latter half of 1966, a 51-day strike in the glass container industry in February and March 1968, which affected the Dunkirk, Millville and Waxahachie Plants, and a seven-day strike in June 1968 at the Macon Plant.

A retirement income plan, a group insurance program with disability benefits and a hospital and surgical program are in effect for most of its employees.

In the opinion of the management of Armstrong, its employee relations have generally been good.

Plants

The location of the manufacturing plants operated by Armstrong and domestic subsidiaries, the principal

products which they are equipped to produce and the approximate area and number of employees (as of June 30, 1968) at the respective plants are as follows:

Location	Principal Products or Use	Approximate Floor Space (Square Feet)	Approximate Number of Employees
Arlington, Texas	Crown caps	101,000	110
Beaver Falls, Pennsylvania, 27th Street Plant	Mineral fiber, foamed plastic and insulating fire brick	394,000	225
Beaver Falls, Pennsylvania, 13th Street Plant	Acoustical materials	210,000	215
Braintree, Massachusetts	Industry products	364,000	940
Cartersville, Georgia	Fiber dyeing	49,000	50
Chatsworth, Georgia (1)	Yarn spinning	34,000	95
Dalton, Georgia	Carpets	222,000	460
Dunkirk, Indiana (2)	Glass containers	480,000	1,005
Fulton, New York	Felt and fibrous sheet material	347,000	460
Gloucester City, New Jersey	Cork importing and general warehousing	369,000	60
Greenville, South Carolina (3)	Textile mill supplies	29,000	35
Jackson, Mississippi	Asphalt and vinyl asbestos tile	124,000	170
Kankakee, Illinois	Asphalt and vinyl asbestos tile	391,000	350
Keyport, New Jersey	Plastic vials and closures	54,000	105
Lancaster, Pennsylvania, Closure Plant	Crown caps and other metal closures; plastic closures and containers	358,000	855
Lancaster, Pennsylvania, Floor Plant	Resilient floor coverings and accessories, consumer products and industry products	2,864,000	2,925
Macon, Georgia (4)	Ceiling and other fiberboard products	1,071,000	1,340
Marietta, Pennsylvania (5) Carpet Plant	Indoor-outdoor carpet and warehousing	723,000	130
Millville, New Jersey	Glass containers	930,000	1,365
Pensacola, Florida	Mineral fiber acoustical products	378,000	600
Pittsburgh, Pennsylvania	Industry products	465,000	415
South Gate, California	Asphalt and vinyl asbestos tile	95,000	140
Waxahachie, Texas (6)	Glass containers	160,000	105

(1) The capacity of this plant is being increased to provide more spinning capacity, the lack of which has been a limiting factor in carpet production.

(2) A new manufacturing line and electric furnace for green glass containers began operation at this plant in 1967.

(3) The land and building are leased.

(4) The capacity of this plant was substantially enlarged in 1966.

(5) In 1967 Armstrong leased about 250 acres of land on the Susquehanna River about 15 miles west of Lancaster with ten major buildings and extensive service facilities. In addition to the buildings which have been equipped and are being used to manufacture indoor-outdoor carpet, some of the buildings are being equipped for the manufacture of mineral fiber acoustical products, some are used for warehousing and others are held for future use.

(6) This plant began operation in January 1967.

Armstrong also holds timberlands in Florida, Georgia and in the vicinity of Cape Girardeau, Missouri, and a sand property in New Jersey.

The plants and other facilities have been constructed at various times, many of them within the last 20 years, but several have been in operation for over 50 years. Armstrong believes that the plants and facilities have been well maintained and are in good operating condition. Except as hereinbefore indicated, the properties on which the plants are located are held in fee, subject to liens of taxes, assessments and other governmental charges not delinquent, mechanics' and materialmen's liens incident to current construction, and to certain exceptions, reservations, easements, encumbrances and minor title defects which do not materially impair the value of the properties thereby affected for the purposes for which they are used and intended to be used.

Armstrong and subsidiaries also own or lease warehouses, showrooms and offices in a number of states.

Armstrong and subsidiaries have been engaged in programs for the construction and improvement of plants and facilities designed to add new products, broaden the range of existing products, increase production, reduce costs and improve the quality of products. During the period from January 1, 1965, to June 30, 1968, domestic capital expenditures have amounted to about $110,000,000.

Foreign Operations

Armstrong subsidiaries operate four plants in England, four in Canada, one in West Germany and four in Spain, at which one or more of the following products are made: floor coverings, mineral fiber ceilings, foamed plastic insulation, cork products, plastic and metal closures and textile mill supplies. Late in 1966 a Canadian subsidiary acquired the business of a Canadian carpet company which makes and sells in Canada woven and tufted carpet. Armstrong has recently formed a subsidiary in Ireland and agreed to acquire a 51% interest in a company to be organized in Australia, both of which plan to manufacture resilient floor coverings. As of December 31, 1967, Armstrong's equity in the net assets of foreign subsidiaries was approximately $28,000,000.

Litigation

Patent infringement claims have been made against Armstrong by The Flintkote Company (Civil Action 754, Southern Dist. of N. Y.) under a patent relating to a foam backed floor covering and by Congoleum-Nairn, Inc. (Civil Action 41762, Eastern Dist. of Pa.) under two patents relating to a foamed and embossed decorative sheet material. The plaintiffs in each case seek injunctive relief and damages in unspecified amounts. It is the opinion of counsel for Armstrong that the respective patents have not been infringed by Armstrong. Various other suits have been brought or claims have been made against Armstrong, some of which are covered in whole or in part by insurance, and which in the opinion of Armstrong and its counsel will not have a materially adverse effect on the financial position of Armstrong and subsidiaries.

BUSINESS AND PROPERTIES OF THOMASVILLE

Products and Marketing

Thomasville, founded in 1904 and organized as a North Carolina corporation in 1925, has its executive offices at Thomasville, North Carolina. Thomasville (itself or through wholly-owned subsidiaries) manufactures three lines of household furniture which are sold through three separate marketing divisions.

Thomasville Line. The Thomasville line of traditional and contemporary household furniture sells in the middle and upper-middle price ranges under the registered tradename, "Thomasville". During the fiscal year ended November 30, 1967, the product mix of this line was approximately: bedroom furniture 50%; dining room furniture 34%; and living room furniture 16%. The Thomasville line is distributed by employee salesmen throughout the United States and in Canada to approximately 6,500 retail stores. Such salesmen handle no other lines of furniture. Showrooms are maintained at Thomasville, Chicago and San Francisco and regional

sales offices are leased at New York City, Chicago and Atlanta. A fourth regional office is maintained in the San Francisco showroom. The Thomasville line is advertised nationally in periodicals and on radio and television, including NBC's "Today Show".

Founders Line. The Founders line of contemporary and modern household furniture, produced by a subsidiary of Thomasville, Founders Furniture, Inc., sells in approximately the same price range as the Thomasville line. In addition, Founders produces and sells a line of traditional living room furniture which is marketed under the tradename, "Western Carolina". During the fiscal year ended November 30, 1967, the product mix of the Founders line was approximately: bedroom furniture 22%; dining room furniture 32%; and living room furniture 46%. The Founders line is distributed by employee salesmen throughout the United States and in Canada to approximately 1,800 retail stores. Such salesmen handle no other lines of furniture. Showrooms for the Founders line are leased at High Point, North Carolina, and Chicago.

Caldwell Line. The Caldwell line is produced by a subsidiary of Thomasville, Caldwell Furniture Company, acquired on April 2, 1968. This line of traditional, contemporary and modern household furniture sells in a price bracket below that of both Thomasville and Founders. During the calendar year ended December 31, 1967, the product mix of the Caldwell line was approximately: bedroom furniture 90%; and dining room furniture 10%. The Caldwell line is distributed nationally to approximately 2,500 retail stores by independent salesmen, none of whom represents Caldwell exclusively. Showrooms are leased at High Point, Lenoir, Chicago, New York City, Los Angeles and San Francisco.

Thomasville, through its subsidiary, Phenix Chair Company, produces dining room chairs for itself and other furniture manufacturers on contract and, through its subsidiary, Fayette Enterprises, Inc., purchases lumber to be dried and otherwise processed, including the production of dimension stock, for use in its business.

Competition

The furniture industry is highly competitive. There are many companies engaged in the production of the same types of furniture as those manufactured by Thomasville. Based on published information, Thomasville believes that its annual sales in recent years have constituted less than 2% of the aggregate annual sales of household furniture in the United States.

Raw Materials and Manufacturing

Selected hardwood constitutes Thomasville's principal raw material. This wood is purchased from independent lumber producers and dealers and is stored and processed for later use in manufacturing. Thomasville also utilizes wood substitutes, such as particleboard. No difficulty is anticipated by Thomasville in obtaining an adequate supply of raw materials.

Thomasville manufactures most of the components required for the assembly of its finished products. Among the operations performed at its plants are the lamination of plywood, the application of veneers to structural furniture components, the production of carvings used as feet, legs, arms and as decoration on various pieces of furniture, the caning of chairs, the upholstering of chairs and sofas and the application of lacquers and other finishing materials.

Thomasville's manufacturing procedures combine mechanization with skilled and semi-skilled labor. Mass production techniques, including conveyor systems, are used in many phases of production. Within a general assembly line system, processes such as hand rubbing, decorative painting and hardware applications are standardized to permit repetitive performance by individual employees.

Employee Relations

Thomasville has about 5,200 employees, none of whom is represented by a labor union. Employee relationships are considered to be good. Thomasville maintains various employee benefit plans, including retirement plans and group life, sickness, hospitalization and surgical insurance.

Properties

The location of manufacturing plants and related facilities operated by Thomasville and subsidiaries, the principal types of furniture and other components which they are equipped to produce, and the approximate area of the facilities, are briefly described as follows:

Location	Type of Furniture or Component	Approximate Floor Space (Square Feet)
Thomasville, North Carolina		
Plant A	Bedroom	278,000
Plant B	Bedroom	221,000
Plant C	Dining room chairs and tables	318,000
Plant D	Dining room	258,000
Plant E	Carving	17,000
Plant G	Upholstery	86,000
Plant J	Upholstery frames	43,000
Plant L	Bedroom	181,000
Plant T	Living room tables	177,000
Plant V	Veneer	109,000
Maintenance and Engineering		57,000
Warehouse		560,000
Lumber Yard		47,000
Office		38,000
Showrooms		97,000
Winston-Salem, North Carolina		
Plant H	Living room tables, bedroom and dining room	481,000
Pleasant Garden, North Carolina		
Founders Plant	Living room tables, bedroom and dining room	300,000
Hickory, North Carolina		
Western Carolina Plant	Upholstery	70,000
West Jefferson, North Carolina		
Phenix Plant	Dining room chairs	89,000
Fayette, Mississippi		
Fayette Facility	Kiln-dried lumber and dimension stock	61,000
Lenoir, North Carolina		
Caldwell Plant	Bedroom and dining room	470,000

All of the properties described above are owned in fee except Plant J at Thomasville, North Carolina, which is leased.

The plants and other facilities are of various forms of construction and ages. Automatic sprinkler systems and other fire protection equipment are maintained with respect to all of the properties.

Thomasville believes that the properties are in good condition and adequately equipped for their intended use. During the past three fiscal years Thomasville and subsidiaries have spent approximately $12,375,000 for expansion, replacement and modernization. During this period depreciation allowances amounted to $6,300,678. The manufacturing operations are currently being conducted on a one-shift, 40-hour-week basis, with overtime as required. Although Thomasville believes that the facilities are adequate to meet normal requirements, it is expected that a continuing program of expansion and capital improvement will be carried forward. At the present time Thomasville has under construction at Thomasville, North Carolina, a particleboard plant to contain approximately 34,000 square feet of floor space and is adding approximately 49,000 square feet of floor space to its plant at West Jefferson, North Carolina, neither of which is reflected in the table above.

MANAGEMENT OF SURVIVING CORPORATION

Directors

The names of the persons designated in the Merger Agreement to be the directors of the Surviving Corporation when the merger becomes effective are shown in the following tabulation. Opposite the name of each person is his principal occupation, the year in which he first became a director of Armstrong, the year in which his term expires and, according to information furnished by him to Armstrong, the number of shares of Common Stock of Armstrong beneficially owned by him, directly or indirectly, on August 1, 1968.

Name	Principal Occupation	Year First Elected	Year Term Expires	Common Stock
James H. Binns	President of Armstrong	1962	1970	7,000(1)
F. C. Crawford	Honorary Chairman of the Board of TRW Inc., (components, systems and services for electronics, space, aircraft, automotive, defense and industrial markets)	1947	1970	600
H. Thomas Hallowell, Jr.	President and Chairman of Standard Pressed Steel Company (precision fasteners, steel shop and office equipment and electronic components)	1961	1970	200
Walter E. Hoadley	Executive Vice President and Chief Economist of Bank of America National Trust and Savings Association	1962	1969	5,501(1)
Harry A. Jensen	Executive Vice-President of Armstrong	1963	1971	4,335
James V. Jones	Executive Vice-President of Armstrong	1966	1970	6,000
William J. Kyle, Jr.	Partner, Buchanan, Ingersoll, Rodewald, Kyle & Buerger, Attorneys-at-Law	1966	1969	500
Charles L. McCune	President of The Union National Bank of Pittsburgh, Pa.	1932	1971	44,710(1)
W. W. Pedrick	Vice-President of Armstrong	1967	1971	5,400
Hobart C. Ramsey	Former Chairman of Worthington Corporation	1955	1971	1,000
F. O. Schweizer	Vice-President of Armstrong	1968	1969	2,012
Duncan B. Tingle	Vice-President of Armstrong	1968	1969	1,775(1)
Eric A. Walker	President of The Pennsylvania State University	1968	1970	100
M. J. Warnock	Chairman of the Board of Directors of Armstrong	1959	1969	12,700
Joseph S. Young	Chairman of the Executive Committee of Lehigh Portland Cement Company.	1962	1971	1,000(1)

(1) These amounts do not include, in the case of Mr. Binns, any of the 3,000 shares of Common Stock transferred by him to a trust fund for the benefit of his son, in which Mr. Binns has a remainder interest; in the case of Mr. Hoadley, an aggregate of 111 shares beneficially owned by his wife, daughter and son as to which he disclaims beneficial ownership; in the case of Mr. McCune, any of the 3,600 shares of Common Stock in a trust fund in which he has a fractional life interest and of which he is not a trustee; in the case of Mr. Tingle, any of the 1,000 shares of Common Stock beneficially owned by his wife as to which he disclaims beneficial ownership; and, in the case of Mr. Young, any of the 2,000 shares of Common Stock held in two trusts of which he is a co-trustee and in each of which he has a fractional remainder interest, or any of the 1,000 shares beneficially owned by his wife as to which he disclaims beneficial ownership.

Officers

The Merger Agreement provides that the present officers of Armstrong will continue as officers of the Surviving Corporation and that Tom A. Finch, President of Thomasville, will become Senior Vice President of the Surviving Corporation.

REMUNERATION OF DIRECTORS AND OFFICERS OF ARMSTRONG

The aggregate amount of remuneration for 1967 paid by Armstrong and its subsidiaries to each director of Armstrong to whom such remuneration was paid in excess of $30,000, including the three highest paid officers of Armstrong, and to the directors and officers of Armstrong as a group, and the amounts of such remuneration to the individuals named after making allowance for federal income taxes on taxable income of such amounts to a husband and wife, are as follows:

TABLE I

Name of Individual or Identity of Group	Capacities in Which Remuneration Was Received	Remuneration	
		Aggregate	After Federal Taxes
C. J. Backstrand[1]	Chairman of the Board	$ 90,000	$51,540
James H. Binns[1]	Senior Vice-President	90,700	51,820
Harry A. Jensen	Vice-President	72,150	43,907
James V. Jones	Vice-President	70,300	43,075
C. N. Painter[1]	Executive Vice-President	130,000	66,788
W. W. Pedrick	Vice-President	53,425	35,246
M. J. Warnock[1]	President	186,000	85,508
Directors and officers as a group, 27 in number		1,200,830[2]	

[1] Mr. Backstrand and Mr. Painter retired on December 31, 1967. At that time Mr. Warnock became Chairman of the Board and Mr. Binns became President.

[2] This amount does not include $65,000 paid as remuneration for legal services by the firm of Buchanan, Ingersoll, Rodewald, Kyle & Buerger, in which Mr. William J. Kyle, Jr., a director of Armstrong, is a partner.

The estimated annual benefits payable to the named individuals under Armstrong's Retirement Income Plan pursuant to which each person contributes until normal retirement age 2% of the portion of his annual earnings subject to Social Security tax (presently $7,800), plus 4% of the balance of his annual earnings, are as follows:

TABLE II

Name	Estimated Annual Benefits Upon Retirement[1]	Name	Estimated Annual Benefits Upon Retirement[1]
C. J. Backstrand	$51,800	James V. Jones	$29,208
James H. Binns	37,719	C. N. Painter	41,825
Harry A. Jensen	33,617	W. W. Pedrick	23,374
		M. J. Warnock	38,382

[1] The annual benefits estimated for each of the individuals named other than Messrs. Backstrand, Painter and Warnock are based upon the assumption that he will continue to be employed by Armstrong at his 1967 earnings rate and to contribute under the Plan until his normal retirement date and will not have elected an optional form of annuity; such benefits for non-retired individuals do not include any unfunded pensions which may be granted at time of retirement by the Board of Directors. When Mr. Backstrand attained age 65, his funded retirement benefit for service after June 1, 1937, was fixed at $39,260 annually which he has received since that time. Mr. Backstrand and Mr. Painter retired on December 31, 1967. In that month the Board of Directors granted unfunded pensions to them in the annual amounts of $12,540 and $11,100, respectively, and they are now receiving the amounts shown opposite their names. When Mr. Warnock attained age 65 in December 1967, his normal funded retirement benefit for service after June 1, 1937, was fixed at $38,382 per annum, but having elected an optional form of annuity, he is now receiving an annuity at the rate of $35,465 per annum. He is not receiving an unfunded pension at this time.

On July 31, 1967, Armstrong granted options to purchase 27,565 shares of Common Stock of Armstrong to 233 employees of Armstrong and its subsidiaries, including four of the individuals named in Table I, such options having been granted under its Employees' Stock Option Plan of 1964 which was adopted by the stockholders on April 27, 1964. The option price under all the options was $55.25 per share, the closing price of the Common Stock on the New York Stock Exchange on that date. The following table shows as to those named individuals and as to the directors and officers as a group (i) the amount of options granted since January 1, 1967, (ii) the number of shares acquired since that date through the exercise of options, such exercised options having been granted in 1959 and 1961 under the Stock Option and Stock Purchase Plan approved by stockholders in 1952 and (iii) the number of shares subject to unexercised options on August 1, 1968.

TABLE III

	James H. Binns	Harry A. Jensen	James V. Jones	W. W. Pedrick	Directors and Officers as a Group
Options to Purchase Common Stock					
Options granted-January 1, 1967 to August 1, 1968					
Number of shares	600	450	400	225	3,500
Options exercised-January 1, 1967 to August 1, 1968					
Number of shares (all under options granted prior to January 1, 1967)	None	500	None	200	2,600
Aggregate option price		$14,315		$5,726	$54,013
Aggregate market price on date options exercised		27,275		10,950	156,281
Options unexercised-August 1, 1968					
Number of shares	1,110	1,330	800	1,025	19,840
Average per share option price	$57.16	$46.86	$57.28	$40.20	$48.36

HOLDER OF MORE THAN 10% OF VOTING SHARES OF THOMASVILLE

To the knowledge of Thomasville, the only person owning more than 10% of the outstanding voting shares of Thomasville as of August 1, 1968, was Mrs. Ernestine Lambeth Finch Mobley, who owned 200,000 shares of Common Stock of Thomasville, being 7.34% of the outstanding voting shares of Thomasville and, in addition, was the income beneficiary for her life of a trust under the will of T. A. Finch which held 154,000 shares of Common Stock, being 5.65% of the outstanding voting shares of Thomasville.

DESCRIPTION OF COMMON STOCK AND PREFERRED STOCKS OF THE SURVIVING CORPORATION

Article 5th of the Articles of Incorporation, as amended, of Armstrong provides that Armstrong is authorized to issue 161,821 shares of No Par Preferred Stock, 1,500,000 shares of Voting Preferred Stock without par value and 30,000,000 shares of Common Stock of the value of $1.00 per share.

As provided in said Article 5th, the Board of Directors is authorized to establish series of No Par Preferred Stock and Voting Preferred Stock, to fix the relative rights and preferences of the respective series, such as the dividend rights, the conversion rights, the sinking fund provisions, the liquidation rights and the redemption prices, and to issue shares thereof.

In 1945 the Board of Directors of Armstrong established a series of No Par Preferred Stock designated "$3.75 Cumulative Preferred Stock", consisting initially of 161,522 shares, of which as of June 30, 1968, 118,179 shares were outstanding and 43,343 shares were held in the treasury of Armstrong. Under the Merger Agreement Armstrong is obligated, prior to the time the merger becomes effective, to establish a series of Voting Preferred Stock designated "$2.375 Convertible Preferred Stock" and consisting of 100,000 shares, into which the outstanding shares of $2.375 Convertible Preferred Stock, Series A, $50 Par, of Thomasville will be converted in the merger on a share for share basis.

[IR]

The following is a summary of certain provisions of the Articles of Incorporation of the Surviving Corporation, as such provisions will exist at the time the merger becomes effective, and is qualified by reference to the Articles of Incorporation of Armstrong and to Exhibit A attached to the Merger Agreement.

Dividend Rights. The holders of Common Stock will be entitled to receive dividends, when and as declared by the Board of Directors, but no dividends may be declared or paid or any distribution made on the Common Stock unless all quarterly dividends accrued on the No Par Preferred Stock (of which the $3.75 Cumulative Preferred Stock is a series) and the Voting Preferred Stock (of which the $2.375 Convertible Preferred Stock will be a series), including the dividends for the current quarter, shall have been paid or declared and set apart. Holders of $2.375 Convertible Preferred Stock will be entitled to cumulative annual dividends at the rate of $2.375 per share but no dividends may be declared on such stock unless all dividends accrued on the $3.75 Cumulative Preferred Stock, including the dividend for the current quarter, shall have been paid or declared and set apart.

Conversion Rights. The holders of $2.375 Convertible Preferred Stock will have the right to convert their shares into Common Stock initially on the basis of 1.05 shares of Common Stock for each share of $2.375 Convertible Preferred Stock. The resolution establishing the series of $2.375 Convertible Preferred Stock will contain provisions designed to prevent dilution of the conversion rights in certain events, such as a subdivision of Common Stock, dividends payable in Common Stock and issues of Common Stock at less than the conversion price.

The $3.75 Cumulative Preferred Stock has no conversion rights.

Redemption Prices. The $2.375 Convertible Preferred Stock will be redeemable in whole or in part at any time after April 2, 1973, at prices commencing at $52.50 per share and reducing by $.50 per share each year to $50 per share, plus accrued dividends.

The $3.75 Cumulative Preferred Stock is redeemable in whole or in part at any time at the price of $102.75 per share, plus accrued dividends.

Liquidation Rights. Upon any voluntary liquidation, dissolution or winding up of the Surviving Corporation, the holders of the $2.375 Convertible Preferred Stock would be entitled to be paid in cash $52.50 per share, plus accrued dividends, or the redemption price per share then in effect, whichever is less, and upon any involuntary liquidation, dissolution or winding up of the Corporation would be entitled to be paid in cash $50 per share, plus accrued dividends, in each case before any distribution shall be made to the holders of Common Stock but subject to the liquidation rights of the holders of $3.75 Cumulative Preferred Stock.

Upon any voluntary liquidation, dissolution or winding up of the Surviving Corporation, the holders of the $3.75 Cumulative Preferred Stock would be entitled to the redemption price of such stock, including accrued dividends, and upon any involuntary liquidation, dissolution or winding up of the Surviving Corporation such holders would be entitled to $100 per share, plus accrued dividends, in either case before any payment or distribution shall be made to the holders of shares of Voting Preferred Stock or Common Stock.

After the payment to the holders of Preferred Stock of the amounts to which they may be entitled, the remaining assets would be divided among the holders of Common Stock.

Voting Rights. The holders of Common Stock and the holders of Voting Preferred Stock, of which the $2.375 Convertible Preferred Stock is a series, will be entitled to one vote per share and to cumulative voting rights in the election of directors.

Holders of Voting Preferred Stock have the following additional voting rights, as a class. If six quarterly dividends on the Voting Preferred Stock shall have accrued and be unpaid, the holders of Voting Preferred Stock will have the right to elect two additional directors, until all accrued dividends have been paid. Without the consent or affirmative vote of the holders of at least 50% of the shares of Voting Preferred Stock, the Surviving Corporation may not, by amendment of its Articles of Incorporation or by merger or consolidation, (a) authorize additional shares of Voting Preferred Stock or of any class of stock ranking on a parity with the Voting Preferred Stock as to dividends or assets, or (b) sell, lease or convey all or substantially all its

property or business or voluntarily liquidate, dissolve or wind up its affairs. Without the consent or affirmative vote of the holders of at least 66⅔% of the shares of Voting Preferred Stock, the Surviving Corporation may not, by amendment of its Articles of Incorporation or by merger or consolidation (a) authorize or increase the authorization of any class of stock ranking senior to the Voting Preferred Stock as to dividends or assets or (b) make any adverse change in the rights of the holders of Voting Preferred Stock as set forth in the Articles of Incorporation or as fixed by the Board of Directors. In addition, if any such change would affect adversely the rights of the holders of any particular series of Voting Preferred Stock, no such change may be made without the consent or affirmative vote of the holders of at least 66⅔% of the shares of such series.

Holders of No Par Preferred Stock, of which the $3.75 Cumulative Preferred Stock is a series, have no voting rights except as provided in the Articles of Incorporation or by law. As provided in the Articles of Incorporation, holders of No Par Preferred Stock have voting rights as a class similar to the additional voting rights of the Voting Preferred Stock as a class described in the preceding paragraph.

Preemptive Rights. The Articles of Incorporation of the Surviving Corporation will provide that it may issue shares of stock, option rights or securities having conversion or option rights, without first offering them to the holders of No Par Preferred Stock or Voting Preferred Stock. In addition, under the Articles of Incorporation the Surviving Corporation will be authorized to issue to employees shares of Common Stock and option rights with respect thereto pursuant to a stock purchase or stock option plan or plans approved by the holders of a majority of the Common Stock, without first offering such shares to the holders of Common Stock. As of August 1, 1968, 99,359 shares were reserved for outstanding options and 94,220 shares were reserved for future options under stock option plans so approved.

Other Provisions. There are no sinking fund provisions applicable to any class of stock and no limitations in any indenture or other agreements on the payment of dividends on any class of stock. The Board of Directors may from time to time issue all or any part of the authorized and unissued shares of any class of stock for such consideration and value as it may determine.

RIGHTS OF DISSENTING SHAREHOLDERS OF THOMASVILLE

Under the provisions of Section 55-113 of the General Statutes of North Carolina, a copy of which is attached hereto following the Merger Agreement, any shareholder of Thomasville who does not vote at the special meeting in favor of the Merger Agreement and who, at or prior to the meeting, gives Thomasville written notice that he objects thereto, may, within 20 days after the authorizing vote is taken, make written demand on Thomasville for the payment to him of the fair value of his shares as of the day prior to the date on which such vote was taken. No further notice of the date by which written demand must be made by Thomasville shareholders will be given. Such shareholder does not become entitled to payment for his shares unless and until the transaction to which he objected is consummated. Thomasville will mail to each shareholder who makes written demand within the 20-day period described above, notice in writing of the date on which the transaction is consummated; provided, such shareholder states in the written demand an address to which such notice should be mailed. Under the provisions of such statute, if Thomasville and the objecting shareholder do not agree, within 30 days after the date on which the transaction actually takes place, on the fair cash value of the shares of the objecting shareholder, such shareholder may, within 60 days after the expiration of such 30-day period, file a petition in the Superior Court of Davidson County, North Carolina, asking for the appointment by the Clerk of three qualified and disinterested appraisers to appraise the fair value of the shares. The award of the appraisers or a majority of them, if no objection shall be filed thereto within 10 days after the award shall have been filed in court, shall be confirmed by the court and when confirmed shall be final and conclusive, and the shareholder, upon depositing the proper share certificates in court, shall be entitled to judgment against Thomasville for the appraised value thereof as of the day prior to the date on which the authorizing vote was taken, together with interest thereon to the date of such confirmation. If either the shareholder or Thomasville files exceptions to such award within 10 days after the award shall have been filed in court, the case shall be transferred to the Civil Issue Docket of the Superior Court for trial.

The foregoing summary does not purport to be a complete statement of the provisions of Section 55-113 of the General Statutes of North Carolina and is qualified in its entirety by reference to that section.

EXHIBIT 1

Holders of $2.375 Convertible Preferred Stock, Series A, $50 Par, as well as holders of Common Stock, of Thomasville may object to the merger and demand payment for their shares under North Carolina law. Voting against the merger does not itself constitute the written objection to the merger or the demand for payment required by North Carolina law, and failure to vote against the merger does not constitute a waiver of the right to payment.

OTHER MATTERS

The managements of Armstrong and Thomasville do not intend to present any other matters for action at the meetings of shareholders of the respective corporations and they have not been informed that any other persons intend to present any matters for action at the respective meetings. However, if any other matters should properly come before either meeting, it is intended that votes will be cast pursuant to the proxy in respect thereto in accordance with the recommendations of the managements of the respective corporations.

Any stockholder of Armstrong who executes and returns the proxy may revoke the same at will at any time prior to the voting of the proxy, but revocation of the proxy will not be effective until notice thereof has been given to the Secretary of Armstrong. Any shareholder of Thomasville who executes and returns the proxy may revoke the same at will at any time prior to the voting of the proxy, but revocation of the proxy will not be effective until written notice thereof has been given to the Secretary of Thomasville and the proxy will be suspended if the person giving the proxy attends the meeting and elects to vote in person. The shares represented by duly executed proxies in the accompanying form received prior to the meeting by the Secretary of the corporation soliciting such proxies and not so revoked or suspended will be voted and if a choice is specified in the space provided therefor in the form of proxy the shares will be voted in accordance therewith.

Armstrong and Thomasville, or if the merger becomes effective the Surviving Corporation, will pay the expenses in connection with the printing, assembling and mailing to their respective shareholders of this proxy statement, notice of meeting and form of proxy. In addition to the use of the mails, proxies may be solicited by directors, officers or regular employees of Armstrong or Thomasville personally or by telephone or telegraph and Armstrong and Thomasville may request persons holding stock in their names, or in the names of their nominees, to send proxy material to and obtain proxies from their principals and will reimburse such persons for their expenses in so doing.

September 6, 1968

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REPORTS OF INDEPENDENT ACCOUNTANTS

Board of Directors
Thomasville Furniture Industries, Inc.
Thomasville, North Carolina

We have examined the statement of consolidated financial position of Thomasville Furniture Industries, Inc. and subsidiaries as of November 30, 1967, and the related statements of consolidated earnings, earnings retained and additional paid-in capital for the three years then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

We did not examine the financial statements of Caldwell Furniture Company, a consolidated subsidiary acquired on April 2, 1968 and accounted for as a pooling of interests, which statements were examined by other public accountants whose report thereon is included elsewhere in this proxy statement. Our opinion expressed herein, insofar as it relates to the amounts included for Caldwell Furniture Company, is based solely on such report.

In our opinion, the accompanying statement of consolidated financial position and statements of consolidated earnings, earnings retained, and additional paid-in capital present fairly the financial position of Thomasville Furniture Industries, Inc., and subsidiaries at November 30, 1967, and the results of their operations for the three years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

ERNST & ERNST

Winston-Salem, N. C.
December 22, 1967, except as to Note A
as to which the date is April 2, 1968

Board of Directors
Caldwell Furniture Company

We have examined the balance sheet of Caldwell Furniture Company, Lenoir, North Carolina as of December 31, 1967 and the related statements of income and retained earnings for the three years then ended (not separately presented herein). Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

Since we were not engaged as auditors until 1965, we were not in attendance to observe procedures followed in determining physical quantities of inventories at January 1, 1965. However, by means of other auditing procedures we satisfied ourselves with respect to inventories used in the statements for this date.

In our opinion, the above-mentioned balance sheet and statements of income and retained earnings present fairly the financial position of Caldwell Furniture Company as of December 31, 1967, and the results of its operations for the three years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

GRISETTE AND BEACH

Lenoir, North Carolina
February 9, 1968

STATEMENT OF CONSOLIDATED FINANCIAL POSITION
THOMASVILLE FURNITURE INDUSTRIES, INC., AND SUBSIDIARIES

ASSETS

	November 30, 1967 (Note A)	May 31, 1968 (Unaudited)
CURRENT ASSETS		
Cash	$ 2,083,975	$ 2,407,016
U. S. and local government obligations—at cost and accrued interest	42,655	42,227
Trade accounts receivable—less allowance of $100,000 at November 30, 1967, and $109,000 at May 31, 1968	10,443,960	10,693,258
Inventories (Note B)	17,932,037	18,604,315
Prepaid insurance and other expense	387,329	317,553
TOTAL CURRENT ASSETS	30,889,956	32,064,369
OTHER ASSETS	346,753	381,781
PROPERTY, PLANTS, AND EQUIPMENT (Note C)		
Land, buildings, machinery, and equipment—at cost	29,891,500	31,872,579
Less allowances for depreciation	11,561,305	12,963,857
TOTAL PROPERTY, PLANTS, AND EQUIPMENT	18,330,195	18,908,722
	$49,566,904	$51,354,872

LIABILITIES AND SHAREHOLDERS' EQUITY

CURRENT LIABILITIES		
Notes payable to banks	$ 1,930,000	$ 3,762,500
Trade accounts payable	881,215	1,469,065
Salaries, wages, and commissions	1,239,049	1,217,322
Taxes on and withheld from payrolls	255,902	468,122
Other accounts payable and accrued expenses	574,963	451,930
Federal and state taxes on income	2,700,369	853,230
Current maturities on long-term debt	210,220	210,979
TOTAL CURRENT LIABILITIES	7,791,718	8,433,148
LONG-TERM DEBT (Note D)	862,970	682,337
Less portion classified as current liability	210,220	210,979
	652,750	471,358
PROVISION FOR DEFERRED COMPENSATION	95,003	95,003
SHAREHOLDERS' EQUITY		
Preferred Stock:		
$50 par value:		
Authorized—250,000 shares		
Outstanding—100,000 shares of $2.375 Convertible Preferred Stock, Series A (entitled to par value upon involuntary liquidation) (Note E)	5,000,000	5,000,000
No par value:		
Authorized—250,000 shares		
Outstanding—none		
Common Stock, par value $2.50 a share (Notes E and F)		
Authorized 10,000,000 shares		
Issued and outstanding—2,714,305 shares at November 30, 1967 and 2,719,850 at May 31, 1968	6,785,763	6,799,625
Additional paid-in capital		34,868
Earnings retained	29,241,670	30,520,870
SHAREHOLDERS' EQUITY	41,027,433	42,355,363
	$49,566,904	$51,354,872

See notes to financial statements.

EXHIBIT 1

THOMASVILLE FURNITURE INDUSTRIES, INC. AND SUBSIDIARIES

STATEMENT OF CONSOLIDATED ADDITIONAL PAID-IN CAPITAL

	Year Ended November 30,			Six Months Ended
	1965	1966	1967	May 31, 1968 (Unaudited)
Balance at beginning of year (Note A):				
Thomasville Furniture Industries, Inc. and subsidiary	$159,208			
Founders Furniture Inc.	21,573			
	180,781			
Restatement to give effect to 1965 merger	485,687			
Restatement to give effect to 1968 merger	(666,468)			
Balance at beginning of period, as restated	—0—	$—0—	$—0—	$—0—
Excess of proceeds over par value of shares issued by Founders Furniture Inc. prior to merger	38,045			
Excess of proceeds over par value of shares issued under stock option plans of Thomasville Furniture Industries, Inc.	98,238	125,703	38,256	75,318
	136,283	125,703	38,256	75,318
Adjustment relating to 1968 merger transaction—Note A	(136,283)	(125,703)	(38,256)	(40,450)
Balance at end of period	$—0—	$—0—	$—0—	$ 34,868

See notes to financial statements.

EXHIBIT 1

THOMASVILLE FURNITURE INDUSTRIES, INC., AND SUBSIDIARIES

STATEMENT OF CONSOLIDATED EARNINGS RETAINED

	Year Ended November 30,			Six Months Ended
	1965	1966	1967	May 31, 1968 (Unaudited)
Balance at beginning of year (Note A):				
Thomasville Furniture Industries, Inc., and subsidiary	$17,070,259			
Founders Furniture, Inc.	1,063,033			
Caldwell Furniture Company	2,592,287			
	20,726,179			
Restatement to give effect to 1968 merger	3,802,032			
Balance at beginning of period, as restated	16,924,147	$21,459,726	$26,001,080	$29,241,670
Net earnings	6,665,643	6,370,305	5,235,197	2,443,449
	22,989,790	27,830,121	31,236,277	31,685,119
Cash dividends declared and paid	1,666,347	1,969,744	2,032,863	1,192,704
Net income of Caldwell Furniture Company for December, 1967, included in statement of income for six months ended May 31, 1968				11,935
	1,666,347	1,969,744	2,032,863	1,204,639
	21,323,443	25,875,377	29,203,414	30,480,420
Adjustment relating to 1968 merger transaction—Note A	136,283	125,703	38,256	40,450
Balance at end of period	$21,459,726	$26,001,080	$29,241,670	$30,520,870

See notes to financial statements.

EXHIBIT 1

THOMASVILLE FURNITURE INDUSTRIES, INC., AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(Information related to May 31, 1968 and the period of six months then ended is unaudited)

NOTE A—PRINCIPLES OF CONSOLIDATION, ETC.

On August 31, 1965, the Company issued 222,075 shares of its Common Stock for all of the capital stock of Founders Furniture, Inc. On April 2, 1968, it issued 100,000 shares of its $2.375 Convertible Preferred Stock, Series A, $50.00 Par, in exchange for all of the capital stock of Caldwell Furniture Company. These transactions have been accounted for as poolings of interests and accordingly the accompanying financial statements and the following notes have been restated to give retroactive effect thereto.

The restatement resulting from the acquisition of Caldwell Furniture Company had the effect of increasing net sales and net earnings previously reported for the five years ended November 30, 1967, in the following amounts:

Year	Net Sales	Net Earnings
1963	$5,080,529	$ 75,014
1964	6,947,209	53,789
1965	7,408,190	153,948
1966	8,199,324	247,337
1967	8,063,027	193,291

The results of operations of Caldwell Furniture Company which are reported on a calendar-year basis have been included in the statement of consolidated earnings since financial statements on the basis of fiscal years ended November 30 are not available. A charge has been made to consolidated earnings retained for the amount of net income of Caldwell for the month of December, 1967, which is included in the statement of income both in 1967 and the six months ended May 31, 1968.

The results of the operations of Fayette Enterprises, Inc., a wholly-owned subsidiary, have been included for the period since the date of its organization, April 9, 1965. Western Carolina Furniture Company, Inc., was acquired in a cash transaction and merged into one of the subsidiaries as of December 1, 1966.

The consolidated financial statements include the accounts of the Company and all of its subsidiaries. Significant intercompany items have been eliminated.

At May 31, 1968, the Company's investment in subsidiaries is carried on the books at $2,420,267 less than its equity in the subsidiaries, which amount is included in the financial statement as earnings retained.

NOTE B—INVENTORIES

Inventories are stated at cost, principally on the last-in, first-out basis. The inventories of three subsidiaries, which comprise approximately $4,500,000 of the total inventory valuation, are stated at cost on the first-in, first-out basis. Opening and closing inventories, by major classes, used in determining cost of products sold for the three years and six months ended May 31, 1968, are as follows:

	Raw Materials	Work In Process	Finished Products
November 30, 1964	$5,094,750	$2,446,235	$4,024,437
November 30, 1965	6,014,541	2,579,474	4,555,698
November 30, 1966	6,894,739	3,184,442	5,633,681
November 30, 1967	7,977,067	2,868,299	7,086,671
May 31, 1968	7,705,443	3,053,981	7,844,890

NOTE C—PROPERTY, PLANTS, AND EQUIPMENT

The major classes of property, plants, and equipment, stated on the basis of cost, are as follows:

	Nov. 30, 1967	May 31, 1968
Land	$ 984,312	$ 1,062,583
Buildings	11,332,395	11,598,582
Machinery and equipment	16,984,463	18,369,668
Construction in progress	589,830	841,746

It is the policy of the Company to provide for depreciation and obsolescence of depreciable assets on the basis of rates and by methods (straight-line, double-declining balance, and sum of the digits) calculated to amortize the cost of the assets over

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

their estimated useful lives. The major classifications of depreciable assets and the ranges of estimated useful lives are as follows:

Buildings	45 to 50 years
Machinery and equipment	5 to 20 years
Furniture and fixtures	10 to 15 years
Delivery equipment	4 to 10 years
Leasehold improvements	Life of lease

Maintenance and repairs and minor expenditures for renewals and betterments have been charged to earnings. Additions and major renewals have been charged to the property accounts. The carrying amounts of assets sold or otherwise disposed of and the related allowances for depreciation have been eliminated from the accounts and the resulting profit or loss has been reflected in earnings.

NOTE D—LONG-TERM DEBT

Long-term debt consists of $94,210 at November 30, 1967 and $80,747 at May 31, 1968, payable to a bank in monthly installments of $2,650 including interest at 5½% per annum and notes payable to shareholders of companies acquired through merger as follows: $501,510 at November 30, 1967 and $334,340 at May 31, 1968, maturing in annual installments of $167,170 with interest at 5½% per annum; and $267,250 at both dates maturing in the years 1968 through 1976 in amounts ranging from $10,875 to $66,850 with interest at 6% per annum.

NOTE E—CAPITAL STOCK

The $2.375 Convertible Preferred Stock, Series A, $50 Par, is convertible at a value of $50 per share into Common Stock at a conversion price of $33.33⅓ per share of Common Stock subject to adjustment under certain conditions. The preferred stock is redeemable after April 2, 1973, at an initial redemption price of $52.50 a share, which decreases annually to $50 a share after April 2, 1978. Holders of preferred stock are entitled to cumulative dividends at the annual rate of $2.375 a share when and as declared. No dividends may be paid on Common Stock unless the full amount of cumulative preferred dividends has been paid or declared.

Shares of Common Stock reserved for issuance were:

	At Nov. 30, 1967	At May 31, 1968
For conversion of preferred stock	-0-	150,000
For employee stock options:		
Options outstanding	58,685	60,760
Available for future grants	52,678	45,250
	111,553	256,010

NOTE F—STOCK OPTIONS

Under the terms of an Employee Stock Option Plan adopted in 1965, options for the purchase of Common Stock may be granted to key employees, including officers, at any time prior to February 24, 1970. Options granted under the Plan shall not exceed 100,000 shares of the authorized but unissued Common Stock of the Company. Options may not be granted to an individual who would, after the issuance of the stock covered by the option, own more than 5% of the Common Stock. Options granted to any one individual may not exceed 5,000 shares. The options may be exercised one year after date of grant as to 25% of the shares and each year thereafter as to an additional 25%. The options terminate five years after the date of grant. The option price is equal to the fair market value of the shares on the date the option is granted. A plan adopted in 1962 provided for the issue of stock under options to the same class of employees at an amount equal to 95% (amended to 100% in 1964) of its fair market value on the date of the option. No further options may be granted under the 1962 plan.

Supplemental information regarding the options for the three years and six months ended May 31, 1968, follows:

Options Outstanding:

		OPTION PRICE		FAIR MARKET AT GRANT	
	Shares	Per Share	Total	Per Share	Total
At Nov. 30, 1967	58,685	$ 8.00 to $29.68	$1,179,634	$ 9.37 to $29.68	$1,180,687
At May 31, 1968	60,760	$10.27 to $33.31	$1,364,789	$10.81 to $33.31	$1,362,087

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Options Becoming Exercisable During The Period:

Period Ended	Shares	OPTION PRICE Per Share	OPTION PRICE Total	FAIR VALUE AT DATE EXERCISABLE Per Share	FAIR VALUE AT DATE EXERCISABLE Total
Nov. 30, 1965	23,600	$ 6.59 to $20.50	$ 213,192	$20.37 to $33.62	$ 618,79
Nov. 30, 1966	25,015	$ 6.59 to $26.81	242,873	$16.37 to $28.87	657,028
Nov. 30, 1967	12,930	$ 6.65 to $29.68	255,592	$15.37 to $31.62	309,67
May 31, 1968	12,908	$10.27 to $29.68	240,887	$30.75 to $33.00	412,83

Options Exercised During The Period:

Period Ended	Shares	OPTION PRICE Per Share	OPTION PRICE Total	FAIR VALUE AT DATE EXERCISED Per Share	FAIR VALUE AT DATE EXERCISED Total
Nov. 30, 1965	19,655	$ 6.59 to $18.62	$ 147,375	$22.50 to $28.60	$ 507,514
Nov. 30, 1966	21,035	$ 6.59 to $20.50	178,253	$21.62 to $34.00	609,923
Nov. 30, 1967	3,660	$ 6.65 to $26.81	47,486	$21.50 to $30.00	97,769
May 31, 1968	5,548	$ 8.90 to $29.68	89,182	$31.25 to $38.38	192,412

The excess of the proceeds from the shares issued under the plans over the par value of the shares is credited to additional paid-in capital.

NOTE G—PENSION PLANS

Substantially all employees are covered by the several retirement plans. Expense relating to the plans amounted to $273,236 in 1965, $387,915 in 1966, $397,935 in 1967, and $194,144 for the six months ended May 31, 1968, which amounts include the normal cost together with amortization of prior-service cost over a period of ten years. As of the date of the most recent annual determination the actuarially computed value of vested benefits under the plans had been funded, and unfunded prior-service cost amounted to approximately $786,750.

Payments to certain retired employees under separate retirement agreements amounted to $63,440 in 1965, $59,124 in 1966, $56,954 in 1967, and $27,939 for six months ended May 31, 1968.

Deferred compensation is provided under a plan for the benefit of key employees, including officers, selected by the Board of Directors from time to time. Amounts awarded under the plan are invested in life insurance policies or credited to the respective employees' accounts. The proceeds of the plan are distributable upon retirement, death, or other termination of employment. The Board of Directors may amend or terminate the plan. The cost of the plan, before prospective credit for income taxes, amounted to $93,940 in 1965, $82,100 in 1966, and $75,950 in 1967.

NOTE H—TAXES ON INCOME

The provision for taxes on income includes the following:

	Year Ended November 30, 1965	1966	1967	Six Months Ended May 31, 1968
Federal	$5,511,797	$5,633,552	$4,764,192	$2,674,643
State	747,975	375,782	462,220	321,559
	6,259,772	6,009,334	5,226,412	2,996,202
Less investment tax credit	170,756	318,381	80,412	—0—
	6,089,016	5,690,953	5,146,000	2,996,202
Charges to provision for deferred compensation				
Federal	28,950	32,360	23,900	—0—
State	3,950	3,700	2,600	—0—
Provision	$6,121,916	$5,726,953	$5,172,500	$2,996,202

The investment tax credit is applied directly as a reduction of current provision for income taxes.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

NOTE I—SUPPLEMENTARY PROFIT AND LOSS INFORMATION

	Year Ended November 30,			Six Months Ended
	1965	1966	1967	May 31, 1968
Maintenance and repairs:				
Cost of products sold	$ 807,276	$ 925,801	$1,172,505	$ 499,833
Other profit and loss accounts	1,387	None	31,499	15,852
Depreciation and amortization:				
Cost of products sold	1,517,973	2,020,937	2,415,757	1,360,519
Other profit and loss accounts	133,166	122,852	100,993	55,024
Taxes (other than income):				
Cost of products sold:				
Payroll	786,451	919,468	978,134	564,980
Property	336,462	378,483	427,387	232,623
Other profit and loss accounts:				
Payroll	103,095	138,049	177,648	110,268
Property	15,266	11,356	23,266	4,457
Other	72,862	64,384	123,361	62,588
Rents:				
Cost of products sold	None	880	46,151	25,269
Other profit and loss accounts	289,574	268,579	351,457	161,365

REPORTS OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

THE BOARD OF DIRECTORS AND STOCKHOLDERS
ARMSTRONG CORK COMPANY:

We have examined the consolidated balance sheet of Armstrong Cork Company and subsidiaries as of December 31, 1967, the related statement of retained earnings for the three years then ended, and the statement of consolidated earnings for the five years then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. The consolidated statements of additional contributed capital and retained earnings of E & B Carpet Mills, Inc. for the year ended March 31, 1966 and the consolidated statement of earnings of E & B Carpet Mills, Inc. for the three years ended March 31, 1966, which are included in the accompanying consolidated financial statements of Armstrong Cork Company, were not examined by us but we have been furnished with the report of other independent accountants thereon.

In our opinion, based upon our examination and the aforementioned report of other independent accountants, such financial statements present fairly the consolidated financial position of Armstrong Cork Company and subsidiaries at December 31, 1967 and the results of their operations for the five years then ended, in conformity with generally accepted accounting principles applied on a consistent basis after giving retroactive effect to the inclusion, which we approve, of the accounts of the foreign subsidiaries as explained in note 1 to financial statements.

PEAT, MARWICK, MITCHELL & CO.

Philadelphia, Pa.
February 16, 1968

Board of Directors
E & B CARPET MILLS, INC.

We have examined the consolidated statements of additional contributed capital and retained earnings of E & B Carpet Mills, Inc. for the year ended March 31, 1966 and the consolidated statement of earnings of E & B Carpet Mills, Inc. for the three years ended March 31, 1966. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, such financial statements (not presented separately herein) present fairly the change in additional contributed capital and retained earnings of E & B Carpet Mills, Inc. for the year ended March 31, 1966, and the results of operations of E & B Carpet Mills, Inc. for the three years ended March 31, 1966, in conformity with generally accepted accounting principles applied on a consistent basis.

ALEXANDER GRANT & COMPANY
Certified Public Accountants

Dallas, Texas
May 8, 1967

ARMSTRONG CORK COMPANY AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEET

December 31, 1967 and June 30, 1968

	December 31, 1967 (000)	June 30, 1968 (Unaudited) (000)
ASSETS		
Current assets:		
Cash	$ 11,516	$ 11,230
U. S. Treasury and other securities, at cost which approximates market	7,558	2,301
Accounts and notes receivable:		
Customers' accounts receivable	55,467	59,059
Customers' notes receivable	294	483
Miscellaneous	2,237	2,062
	57,998	61,604
Less provision for discounts and losses	2,055	4,388
	55,943	57,216
Inventories (note 2):		
Finished stock	38,162	43,981
Goods in process	10,881	11,827
Raw materials	11,825	14,650
Supplies	4,264	4,351
	65,132	74,809
Prepaid expenses	3,929	3,345
Total current assets	142,378	148,901
Sundry assets and investments, at cost or less	2,200	2,365
Property, plant and equipment, at cost (note 3):		
Land	15,505	15,393
Buildings	95,586	99,154
Machinery and equipment	222,075	225,263
Construction in progress	16,963	23,939
	350,129	363,749
Less provision for depreciation and amortization	142,542	148,475
	207,587	215,274
Paid-up licenses, at cost less amortization (note 3)	115	474
	$353,180	$367,114
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Notes payable	$ 9,365	$ 12,075
Current installments on long-term debt (note 4)	983	345
Accounts payable:		
Trade	16,550	19,952
Other	1,141	1,004
	17,691	20,956
Accrued expenses, withholding and other taxes:		
Salaries, wages and commissions and related withholding taxes	9,748	10,105
Social security taxes	556	441
State income, capital stock and other taxes	1,862	933
Insurance, royalties and miscellaneous	2,373	4,669
	14,539	16,148
Federal and foreign income taxes	7,095	7,095
Total current liabilities	49,173	57,189
Long-term debt (note 4)	6,956	5,638
Deferred income taxes (note 5)	12,865	13,386
Deferred investment credit (note 6)	2,200	2,050
Stockholders' equity:		
Preferred stock, $3.75 cumulative, no par value. Authorized 161,821 shares; issued 161,522 shares (note 7)	16,596	16,596
Voting Preferred Stock, no par value. Authorized 1,500,000 shares; issued none	—	—
Common Stock, $1 par value per share. Authorized 30,000,000 shares; issued 10,765,617 and 10,778,486 shares, respectively (notes 8 and 9)	10,766	10,778
Capital surplus (note 8)	49,012	48,804
Retained earnings	211,405	216,716
	287,779	292,894
Less treasury stock, at cost:		
Preferred stock—43,343 shares	3,984	3,984
Common Stock—30,789 and 7,233 shares, respectively	1,809	359
Total stockholders' equity	281,986	288,551
	$353,180	$367,114

See accompanying notes to financial statements.

EXHIBIT 1

ARMSTRONG CORK COMPANY AND SUBSIDIARIES

STATEMENT OF CONSOLIDATED RETAINED EARNINGS

Three Years ended December 31, 1967 and Six Months ended June 30, 1968

	Year ended December 31,			Six Months ended June 30, 1968 (Unaudited)
	1965	1966	1967	
	(000)	(000)	(000)	(000)
Amount at beginning of period:				
Armstrong Cork Company	$160,578	$182,613	$199,567	$211,405
E & B Carpet Mills, Inc. (note 1)	932	—	—	—
Adjustment to conform E. & B. Carpet Mills, Inc. accounting period	(278)	—	—	—
Net earnings for the period	36,390	32,299	27,322	13,069
	197,622	214,912	226,889	224,474
Deduct dividends:				
Preferred stock, $3.75 per share in 1965, 1966 and 1967; $1.87½ per share in the six months ended June 30, 1968	583	458	444	222
Common Stock, $1.37½ per share in 1965, $1.40 per share in 1966 and 1967 and $.70 per share in the six months ended June 30, 1968	14,426	14,731	14,750	7,536
E & B Carpet Mills, Inc. prior to acquisition	—	156	290	—
	15,009	15,345	15,484	7,758
Amount at end of period	$182,613	$199,567	$211,405	$216,716

See accompanying notes to financial statements.

EXHIBIT 1

ARMSTRONG CORK COMPANY AND SUBSIDIARIES

NOTES TO FINANCIAL STATEMENTS

(Data with respect to June 30, 1968 and the six months then ended are unaudited.)

(1) Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its subsidiaries. Intercompany accounts, transactions and profits have been eliminated. Beginning with the year ended December 31, 1967 the Company's foreign subsidiaries were included in the consolidated financial statements. As originally reported (1966 and prior) the Company had taken into earnings only dividends actually received from foreign subsidiaries; however, financial statements shown herein for all periods have been restated to include the foreign subsidiaries on a comparative basis. This change had no significant effect on consolidated net earnings for 1967 or 1966 and increased earnings for 1965 by approximately 5%.

The Company's consolidated foreign subsidiaries at December 31, 1967 and at June 30, 1968, had current assets of $23,688,000 and $26,992,000, plant and other assets of $23,030,000 and $24,614,000, current liabilities of $14,756,000 and $18,964,000, and long-term debt of $2,743,000 and $2,716,000. Net earnings of such subsidiaries for the year ended December 31, 1967 were $190,000 after deducting a $280,000 loss due to currency devaluation. Net earnings of such subsidiaries for the six months ended June 30, 1968 were $720,000.

On November 30, 1967, the Company acquired the assets and business of E & B Carpet Mills, Inc., and in consideration therefor assumed the liabilities of E & B Carpet Mills, Inc., and issued 219,538 shares of Common Stock. The acquisition has been treated as a pooling of interests for accounting purposes and accordingly the accompanying consolidated financial statements include the accounts of E & B Carpet Mills, Inc. for all periods.

The excess of the Company's equity in the net assets of its subsidiaries over its investment in the subsidiaries amounted to $14,628,000 at December 31, 1967 ($15,844,000 at June 30, 1968) and has been included in consolidated retained earnings.

Foreign currencies have been expressed in U. S. dollars as follows: property, plant and equipment at approximate U. S. dollar equivalent of cost at dates of acquisitions; all other asset and liability accounts at current exchange rates; operating accounts at average exchange rates for the year, except for depreciation charges which have been based on the U. S. dollar cost of the related assets.

(2) Inventories

Inventories are stated at the lower of cost or market. Cost is determined under the "first-in, first-out" (fifo) method except as to certain materials valued under the "last-in, first-out" (lifo) method. The following inventory amounts were used in the computation of cost of goods sold:

	Fifo materials	Lifo materials	Total inventories
December 31, 1964	$52,317,000	$2,052,000	$54,339,000
December 31, 1965	53,751,000	2,812,000	56,563,000
December 31, 1966	62,410,000	2,427,000	64,837,000
December 31, 1967	63,028,000	2,204,000	65,232,000
June 30, 1968 (unaudited)	72,677,000	2,132,000	74,809,000

(3) Depreciation, Amortization, Etc.

The Company generally uses straight-line depreciation for financial reporting purposes at rates calculated to provide for the retirement of property, plant and equipment at the end of their useful lives. Estimated useful lives of individual units of property are reviewed from time to time by Company engineers. Special obsolescence, representing the excess of cost over accumulated depreciation on individual items of property retired or replaced, is charged to operations as additional depreciation in the year the obsolescence is sustained.

The approximate average effective rates of depreciation are as follows:

	%
Domestic companies:	
Buildings	2.7
Machinery	6.3
Office furniture and fixtures	10.8
Delivery equipment	28.8
Loose equipment and tools	17.8
Molds, stencils and blocks	40.0
Foreign companies:	
Buildings	3.4
Machinery and equipment	8.3

Upon retirement or other disposition, the accounts are relieved of the asset cost and the related accumulated depreciation. Resulting gains and losses are reflected in earnings.

Maintenance and repairs are charged to expense at the time the expenditure is incurred.

The cost of paid-up licenses is amortized over the remaining lives of the licenses.

ARMSTRONG CORK COMPANY AND SUBSIDIARIES

NOTES TO FINANCIAL STATEMENTS (Continued)

(4) Long-term Debt

Long-term debt, including installments due currently, is as follows:

	December 31, 1967		June 30, 1968	
	Current	Noncurrent	Current	Noncurrent
	(000)	(000)	(000)	(000)
5½% convertible subordinated debentures	$ —	$1,003	$ —	$ —
9% bank note of a foreign subsidiary due 1970 with annual payments of $800,000 (as of June 30, 1968 note extended to 1972 with interest at 8½%)	600	1,200	—	1,200
Notes and capitalized lease obligation secured by land and buildings with net book value totaling approximately $6,003,000 at December 31, 1967 and $6,369,000 at June 30, 1968, due annually to 1991 with interest rates ranging from 5½% to 8%	383	4,753	345	4,738
	$983	$6,956	$345	$5,938

In January 1968, 28,726 shares of treasury Common Stock were issued upon conversion of the 5½% convertible subordinated debentures. If this conversion had taken place in 1967, there would have been no change in the reported earnings per share for the year 1967.

(5) Deferred Income Taxes

For income tax purposes the Company uses accelerated depreciation as permitted by the Internal Revenue Service. Provision has been made in the accounts for future income taxes applicable to depreciation and other minor items reported differently for tax and financial reporting purposes.

(6) Investment Credit

The 1967 investment credit has been taken directly into income as a reduction of provision for income taxes. Prior years' credits, which were deferred, are being amortized over the lives of the related assets. As a result of the change in accounting method, made to conform with predominant industry practice, net earnings for the year ended December 31, 1967, were increased by approximately $1,000,000. Amortization of deferred investment credit amounted to $205,000 in 1965; $330,000 in 1966; $314,000 in 1967; and $150,000 in the six months ended June 30, 1968.

(7) Preferred Stock

The shares of $3.75 Cumulative Preferred Stock are redeemable in whole or in part at the Company's option at $102.75, plus accrued dividends. The shares are stated in the balance sheet at the redemption price and have an involuntary liquidation value of $100.00, plus accrued dividends.

(8) Capital Surplus

The changes in capital surplus during the three years and six months ended June 30, 1968 are reflected in the following summary:

	Year ended December 31,			Six Months ended June 30, 1968
	1965	1966	1967	(Unaudited)
Amount at beginning of period:				
Armstrong Cork Company	$45,363,000	$47,671,000	$48,233,000	$49,012,000
E & B Carpet Mills, Inc. (note 1)	448,000	—	—	—
Par value of pooled company stock in excess of the par value of 152,171 shares of Armstrong Cork Company Common Stock issued in exchange, net of acquisition expenses	78,000	—	—	—
Excess of proceeds over par value of shares of Common Stock sold to employees upon exercise of options (38,264 shares in 1965; 24,116 shares in 1966; 15,556 shares in 1967; and 12,869 shares in the six months ended June 30, 1968)	681,000	437,000	298,000	233,000
Miscellaneous stock issuances of E & B Carpet Mills, Inc. prior to acquisition (equivalent to 47,300 shares of Armstrong Cork Company Common Stock in 1965; 3,214 shares in 1966; and 16,825 shares in 1967)	1,101,000	125,000	527,000	—
	47,671,000	48,233,000	49,058,000	49,245,000
Deduct cost of treasury Common Stock (3,011 shares in 1967 and 28,556 shares in the six months ended June 30, 1968) in excess of face amount of debentures converted and of proceeds from exercise of options	—	—	46,000	441,000
Amount at end of period	$47,671,000	$48,233,000	$49,012,000	$48,804,000

EXHIBIT 1

ARMSTRONG CORK COMPANY AND SUBSIDIARIES

NOTES TO FINANCIAL STATEMENTS (Continued)

(9) Stock Option Plans

Under the option plan approved by the stockholders in 1952 there were options outstanding for 53,179 shares of Common Stock at December 31, 1967 (50,852 shares at June 30, 1968), with 4,080 shares available at both dates for the granting of future options. The option prices are not less than 95% of the closing market price of the shares on the dates the options were granted. These options are exercisable on a cumulative basis and expire ten years from date of grant.

Under the option plan approved by the stockholders in 1964 there were options outstanding for 59,940 shares of Common Stock at December 31, 1967 (59,838 shares at June 30, 1968), and 90,060 shares (90,140 shares at June 30, 1968) were reserved for future options. The option prices are not less than the closing market price of the shares on the dates the options are granted. These options are exercisable on a cumulative basis and expire five years from date of grant.

In addition, there were options outstanding for 2,900 shares of Common Stock at December 31, 1967 (1,402 shares at June 30, 1968) in connection with options originally granted by E & B Carpet Mills, Inc. at the closing market price of the shares on the date the options were granted. These options are exercisable on a cumulative basis and expire on November 28, 1970. It is the Company's intention to satisfy these outstanding options with treasury Common Stock.

Options for 116,919 shares, granted 1959 to 1967, were outstanding at December 31, 1967 at an average option price of $40.73 per share or a total of $4,726,000 at dates of grant, at which dates the average market price was $41.23 per share or a total of $4,784,000. At June 30, 1968 options for 101,572 shares, granted 1959 to 1967, were outstanding at an average option price of $43.65 per share or a total of $4,434,000 at dates of grant, at which dates the average market price was $44.13 per share or a total of $4,482,000.

Options became exercisable or were exercised as follows:

	Number of shares	Option price: Average per share	Option price: Total	Market price at exercisable date or date exercised: Average per share	Market price at exercisable date or date exercised: Total
Options exercisable:					
1965	15,170	$23.99	$364,000	$69.08	$1,048,000
1966	11,636	40.82	475,000	52.77	614,000
1967	7,610	54.75	417,000	49.11	374,000
Six months ended June 30, 1968 (unaudited)	4,448	58.03	258,000	67.92	302,000
Options exercised:					
1965	38,264	18.82	720,000	62.72	2,400,000
1966	24,118	19.11	461,000	53.53	1,291,000
1967	15,680	20.27	318,000	54.69	858,000
Six months ended June 30, 1968 (unaudited)	13,670	19.64	269,000	63.65	872,000

No values are assigned in the accounts to options and accordingly no charges are reflected in earnings.

None of the capital stock is reserved for officers and employees or for options, warrants, conversions, or other rights, except as stated above.

(10) Pension Plans

The Company and certain of its subsidiaries have pension plans covering substantially all employees. The pension costs, actuarially determined and charged to operations, were $3,779,000 for 1967 and $1,661,000 for the six months ended June 30, 1968.

These costs include current service cost and, as to certain of the plans, amortization of prior service cost over periods ranging from 25 to 30 years. The Company's policy is to fund these pension costs currently.

ARMSTRONG CORK COMPANY AND SUBSIDIARIES

NOTES TO FINANCIAL STATEMENTS (Continued)

(11) Supplementary Profit and Loss Information

	Year ended December 31,			Six months ended June 30, 1968 (Unaudited)
	1965	1966	1967	
	($000)	($000)	($000)	($000)
Maintenance and repairs (except as to office equipment and automobiles, the amounts of which are not significant):				
Charged to cost of goods sold	$13,259	$13,772	$15,966	$ *
Charged to other expenses	1,140	1,274	1,358	*
	14,399	15,046	17,324	9,096
Depreciation and amortization charged to other expenses:				
Depreciation of property, plant and equipment	16,052	17,080	19,236	10,153
Depletion of timberlands	82	82	102	45
Amortization of intangible assets	11	11	52	34
	16,145	17,173	19,390	10,232
Taxes, other than federal and foreign income taxes:				
Charged to cost of goods sold	7,136	8,020	8,360	*
Charged to other expenses	3,350	3,890	4,023	*
	10,486	11,910	12,383	6,146
Included in taxes are the following:				
Social security	4,564	5,823	6,185	3,140
State capital stock and franchise	255	239	310	99
State income	2,481	2,186	1,998	1,074
Real and personal property and miscellaneous	3,186	3,662	3,890	1,833
	10,486	11,910	12,383	6,146
Rents:				
Charged to cost of goods sold	645	856	998	*
Charged to other expenses	1,779	2,024	2,041	*
	2,424	2,880	3,039	1,503
Royalties:				
Charged to cost of goods sold	320	90	362	*
Charged to other expenses	67	221	26	*
	387	311	388	192

*Breakdown not available on interim basis.

EXHIBIT 1

JOINT PLAN AND AGREEMENT OF MERGER

DATED the 29th day of July, 1968, by and between ARMSTRONG CORK COMPANY, a Pennsylvania corporation (hereinafter called "Armstrong" or the "Surviving Corporation"), and THOMASVILLE FURNITURE INDUSTRIES, INC., a North Carolina corporation (hereinafter called "Thomasville"), the Surviving Corporation and Thomasville being sometimes hereinafter called the "Constituent Corporations",

WITNESSETH:

WHEREAS, the Constituent Corporations, acting by their respective Boards of Directors, have determined that it is advisable that Thomasville be merged into Armstrong on the terms and conditions set forth in this Joint Plan and Agreement of Merger (the "Agreement"), pursuant to the applicable statutes of the Commonwealth of Pennsylvania and the State of North Carolina.

NOW, THEREFORE, Armstrong and Thomasville hereby agree that, pursuant to the applicable statutes of the Commonwealth of Pennsylvania and the State of North Carolina and subject to the conditions herein set forth, Thomasville shall be merged into Armstrong, which shall be the surviving corporation, and that the plan, terms and conditions of such merger (the "Merger"), shall be as follows:

ARTICLE ONE

1.01. **Merger.** At the Effective Date (as defined in Section 1.04) of the Merger, Thomasville shall be merged into Armstrong, the separate existence of Thomasville shall cease, and Armstrong as the surviving corporation shall continue to exist by virtue of and shall be governed by the laws of the Commonwealth of Pennsylvania, under its present name of "Armstrong Cork Company".

1.02. **Articles of Incorporation of Surviving Corporation.** The Articles of Incorporation of Armstrong, as in effect immediately prior to the Effective Date, shall be and continue to be the Articles of Incorporation of the Surviving Corporation until amended in accordance with law. Pursuant to Section 5.02 hereof, Armstrong shall prior to the Effective Date amend its Articles of Incorporation by establishing a series of its Voting Preferred Stock to be known as "$2.375 Convertible Preferred Stock".

1.03. **By-laws of Surviving Corporation.** The By-laws of Armstrong, as in effect immediately prior to the Effective Date, shall be and continue to be the By-laws of the Surviving Corporation until amended in accordance with law.

1.04. **Effective Date of Merger.** This Agreement shall be submitted to the stockholders of each of the Constituent Corporations for approval by them at meetings which shall be held on October 14, 1968, or such other date or dates as the Boards of Directors of both of the Constituent Corporations shall approve. If approved and adopted by the shareholders of Armstrong and by the shareholders of Thomasville in accordance with the requirements of applicable law and the provisions of the charter and of the outstanding securities of the respective Constituent Corporations, and subject to the prior satisfaction of all conditions precedent to the consummation of the Merger set forth herein, then appropriate Articles of Merger shall be filed pursuant to Sections 55-109 and 55-4 of the North Carolina Business Corporation Act and thereupon, or simultaneously therewith, appropriate Articles of Merger shall be filed pursuant to Section 905 of the Pennsylvania Business Corporation Law. The Merger shall become effective upon the filing of the Articles of Merger pursuant to Section 905 of the Pennsylvania Business Corporation Law or at such other time after such filing as may be set forth in this Agreement by amendment hereto. The time of such effectiveness is herein referred to as the "Effective Date."

1.05. **Effect of Merger.** On the Effective Date, all the property, real, personal and mixed, of each of the Constituent Corporations and all the debts due on whatever account to either of them, including subscriptions to shares and other choses in action belonging to either of them, shall be taken and deemed to be transferred to and vested in the Surviving Corporation, without further act or deed. The Surviving Corporation shall thenceforth be responsible for all the liabilities and obligations of each of the Constituent Corporations, but the liabilities of the Constituent Corporations, or their stockholders, directors or officers, shall not be

affected, nor shall the rights of the creditors thereof or of any person dealing with the Constituent Corporations, or any liens upon the property of the Constituent Corporations, be impaired by the Merger, and any claim existing or action or proceeding pending by or against either of the Constituent Corporations may be prosecuted to judgment as if the Merger had not taken place, or the Surviving Corporation may be proceeded against or substituted in its place. From time to time as and when requested by the Surviving Corporation, or by its successors or assigns, Thomasville will execute and deliver such deeds and other instruments and will take or cause to be taken such further or other action as shall be necessary in order to vest or perfect in or to confirm of record or otherwise to the Surviving Corporation title to, and possession of, all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of Thomasville, and otherwise to carry out the purposes of this Agreement. Notwithstanding the foregoing provisions of Section 1.05, the Merger, in all respects, shall be subject to and controlled by the applicable provisions of the North Carolina Business Corporation Act and the Pennsylvania Business Corporation Law, and nothing set forth in this Agreement shall be in derogation of the rights, privileges, immunities and franchises of any person, firm or corporation arising out of such statutory provisions.

ARTICLE TWO

2.01. **Armstrong Capital Stock.** Upon the Effective Date the shares of capital stock of Armstrong then outstanding and any shares held in its treasury shall remain unchanged by reason of the Merger, subject in the case of Common Stock to the rights of the holders of $2.375 Convertible Preferred Stock of the Surviving Corporation.

2.02. **Thomasville $2.375 Convertible Preferred Stock, Series A.** Upon the Effective Date the shares of $2.375 Convertible Preferred Stock, Series A, of Thomasville then outstanding shall be converted into fully paid and nonassessable shares of $2.375 Convertible Preferred Stock of Armstrong on a share for share basis.

2.03. **Thomasville Common Stock.** Upon the Effective Date the shares of Common Stock of Thomasville then outstanding shall be converted into fully paid and nonassessable shares of Common Stock of Armstrong on the basis of seven-tenths of a share of Common Stock of Armstrong for each share of Common Stock of Thomasville.

2.04. **Thomasville Stock Options.** Upon the Effective Date the outstanding stock options to purchase shares of Common Stock of Thomasville under Thomasville's employees' stock option plans shall be converted into options to purchase shares of Common Stock of Armstrong on the basis of seven-tenths of a share of Common Stock of Armstrong for each share of Common Stock of Thomasville covered by the respective options. The option price per share of Common Stock of Armstrong upon the conversion of each such option shall be one and three-sevenths times the option price per share set forth therein and, except for such price adjustment, all other terms and conditions of such options on the Effective Date shall remain the same. If any conversion of an option for Common Stock of Thomasville into an option for Common Stock of Armstrong as herein provided would result in an option with respect to a fractional share of Common Stock of Armstrong, such option shall be reduced to cover the next lower whole number of shares of Common Stock of Armstrong.

2.05. **Exchange of Certificates.** After the Effective Date each holder of a certificate or certificates theretofore representing shares of $2.375 Convertible Preferred Stock, Series A, of Thomasville or Common Stock of Thomasville converted pursuant to Section 2.02 or Section 2.03 hereof shall surrender the same to Armstrong or its agent for cancellation and shall receive in exchange therefor a certificate or certificates representing the number of whole shares of $2.375 Convertible Preferred Stock of Armstrong or Common Stock of Armstrong into which such shares of Thomasville have been so converted. Until such surrender for cancellation each such outstanding certificate shall, after the Effective Date, be deemed for all corporate purposes to evidence the number of whole shares of $2.375 Convertible Preferred Stock or Common Stock of Armstrong into which the shares previously represented thereby shall have been converted; provided, however, that dividends in respect of such shares of $2.375 Convertible Preferred Stock or Common Stock of Armstrong

payable to the holder of record of such certificate after the Effective Date may be held (without interest) until such certificate is so surrendered for exchange. If any certificate for $2.375 Convertible Preferred Stock or Common Stock of Armstrong is to be issued in a name other than that in which the surrendered certificate shall have been registered, it shall be a condition of such exchange that the certificate so surrendered shall be properly endorsed for transfer or accompanied by an appropriate instrument of transfer and any applicable stock transfer taxes shall be paid by the holder thereof.

2.06. **Fractional Interests.** No fractional shares of Common Stock of Armstrong and no scrip certificates therefor shall be issued, but in lieu thereof the Surviving Corporation will make agency arrangements on behalf of any person otherwise entitled to a fractional share so that he may sell his fractional interest or buy an additional fractional interest sufficient to make one whole share of Common Stock of Armstrong. No fractional interest shall entitle the owner thereof to vote, to receive dividends or to exercise any other rights of a stockholder. All fractional interests which are not eliminated pursuant to such arrangements within sixty days after the Effective Date will be sold and the proceeds thereof remitted to the stockholders entitled thereto.

2.07. **Transfer to Armstrong Subsidiary.** On or immediately following the Effective Date, Armstrong shall transfer, assign and convey to a new corporation, which Armstrong shall have caused to be organized under the name of Thomasville Furniture Industries, Inc., all of the assets, rights, privileges, immunities, powers, franchises and authorities of Thomasville, subject to all of the liabilities and obligations of Thomasville, which shall have passed to Armstrong by virtue of the Merger, which liabilities and obligations shall include but not be restricted to any unpaid expenses of Thomasville arising out of the transactions contemplated by this Agreement and satisfaction of the rights of any dissenting shareholders of Thomasville. Immediately following such transaction Armstrong shall own all of the shares of capital stock of such new subsidiary corporation, which new subsidiary corporation shall succeed to the business theretofore conducted by Thomasville. Nothing contained in this Section 2.07 shall relieve Armstrong of any of the liabilities or obligations assumed by it pursuant to this Agreement. If the new subsidiary corporation is organized under the laws of a jurisdiction other than North Carolina, Armstrong shall cause the new subsidiary corporation to obtain a certificate of authority to transact business in North Carolina. Armstrong shall also cause the new subsidiary corporation to obtain authority to transact business in every other jurisdiction in which Thomasville is qualified.

ARTICLE THREE

3.01. **Board of Directors.** The names and addresses of the Directors of the Surviving Corporation on the Effective Date shall be as follows:

Name	Address
James H. Binns	111 Eshelman Road Lancaster, Pa. 17601
F. C. Crawford	Apt. 803 1 Bratenahl Place Cleveland, Ohio 44108
H. Thomas Hallowell, Jr.	980 Meetinghouse Road Rydal, Pa. 19046
Walter E. Hoadley	Apartment 2205 999 Green Street San Francisco, Calif. 94133
H. A. Jensen	1524 Quarry Lane Lancaster, Pa. 17603
J. V. Jones	300 Eshelman Road Lancaster, Pa. 17601

Name	Address
William J. Kyle, Jr.	5700 Bunker Hill Street Pittsburgh, Pa. 15206
Charles L. McClune	1491 Coraopolis Heights Rd. Coraopolis, Pa.
W. W. Pedrick	1120 Wheatland Avenue Lancaster, Pa. 17603
Hobart C. Ramsey	6 Delbarton Drive Short Hills, New Jersey 07078
F. O. Schweizer	1401 Clayton Road Lancaster, Pa. 17603
D. B. Tingle	2508 Butter Road Lancaster, Pa. 17601
Eric A. Walker	The President's Residence West Campus Pennsylvania State University University Park, Pa. 16802
M. J. Warnock	515 Hamilton Road Lancaster, Pa. 17603
Joseph S. Young	Stone House Route 2 Allentown, Pa. 18103

3.02. Officers. The names of the officers of the Surviving Corporation on the Effective Date shall be as follows:

Name	Office
James H. Binns	President
M. J. Warnock	Chairman of the Board
H. A. Jensen	Executive Vice-President
J. V. Jones	Executive Vice-President
Tom A. Finch	Senior Vice-President
Max Banzhaf	Vice-President and Treasurer
F. S. Donnelly, Jr.	Vice-President
M. D. Ford	Vice-President
W. W. Pedrick	Vice-President
F. O. Schweizer	Vice-President
A. H. Shrader	Vice-President and Secretary
D. B. Tingle	Vice-President
R. L. Eibs	Controller
A. G. Matamoros	Chief Economist
N. L. Bitner	Assistant Secretary
E. G. Fiedler, Jr.	Assistant Secretary
G. L. Herr	Assistant Secretary
C. A. Walker, Jr.	Senior Assistant Treasurer
W. T. Wade	Assistant Treasurer

ARTICLE FOUR

4.01. Representations and Warranties of Thomasville. Thomasville represents and warrants to Armstrong as follows:

(a) Thomasville is a corporation duly organized, validly existing and in good standing under the laws of the State of North Carolina, the state in which all of its plants and real estate are located, and has power to own and carry on its business as now being conducted.

(b) Thomasville owns, directly or indirectly, all of the issued and outstanding capital stock of the following corporations (hereinafter collectively called the "Subsidiaries"):

Phenix Chair Company

Founders Furniture, Inc.

Fayette Enterprises, Inc.

Caldwell Furniture Company

and does not own as much as thirty per cent of the stock of any other corporation.

(c) Each of the Subsidiaries is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation, the state in which all of its plants and real estate are located, and has power to own and carry on its business as now being conducted.

(d) The authorized capital stock of Thomasville consists of 250,000 shares of No Par Preferred Stock, 250,000 shares of $50 Par Preferred Stock and 10,000,000 shares of Common Stock having a par value of $2.50 per share. On June 30, 1968, 100,000 shares of $2.375 Convertible Preferred Stock, Series A, a series of $50 Par Preferred Stock, and 2,719,850 shares of Common Stock were outstanding, all of which are fully paid and nonassessable. As of that date, employees of Thomasville and its subsidiaries held options to purchase 71,215 shares of Common Stock of Thomasville. Except for such stock options and the conversion rights with respect to the outstanding shares of $2.375 Convertible Preferred Stock, Series A, Thomasville has no commitment to issue any shares of its authorized and unissued capital stock.

(e) The capital stock of each of the Subsidiaries is owned by Thomasville, free of any liens, encumbrances or claims or rights of others, with full power to transfer such stock. None of the Subsidiaries has any commitment to issue any shares of its authorized and unissued capital stock.

(f) Thomasville has furnished to Armstrong copies of its annual reports for its fiscal years 1963, 1964, 1965, 1966 and 1967 containing audited statements of consolidated financial condition of Thomasville and its then owned subsidiaries as of November 30 in such years, respectively, and audited statements of their consolidated earnings and earnings retained in the business for the fiscal years ended on such dates, respectively. Said financial statements fairly present the financial condition of Thomasville and such subsidiaries and the results of their operations as of the times and for the periods indicated. Thomasville has also furnished to Armstrong an unaudited statement of consolidated financial condition of Thomasville and its Subsidiaries as of May 31, 1968, and an unaudited statement of consolidated earnings and earnings retained in the business of Thomasville and its Subsidiaries for the six months' period ended May 31, 1968, which fairly present the financial condition of Thomasville and its Subsidiaries and the results of their operations as of the time and for the period indicated; there were no liabilities or obligations for the payment of money, contingent or otherwise, known or unknown, of a material nature of Thomasville and its Subsidiaries as of May 31, 1968, not reflected in the statement of consolidated financial condition as of that date; since such date no materially adverse change in the financial condition or operations of Thomasville and its Subsidiaries has occurred; and since May 31, 1968, no liabilities or obligations for the payment of money, contingent or otherwise, known or unknown, of a material nature have been incurred by Thomasville or any of its Subsidiaries otherwise than in the ordinary course of business or as contemplated by this Agreement.

(g) Since May 31, 1968, there has been no change in the condition of the assets, liabilities or other obligations or business of Thomasville and its Subsidiaries, other than changes in the ordinary course of business, none of which has been materially adverse, nor any damage, destruction or loss of a material nature affecting their business or assets, nor any declaration or payment of any dividend nor any distribution in respect of the capital stock of Thomasville, nor any increase in the compensation payable to any officer, employee or agent of Thomasville or any of its Subsidiaries, nor any written or oral agreement made with respect thereto, including bonuses, pensions, profit sharing or otherwise, except that between May 31, 1968, and the date of delivery of this Agreement (i) the regular quarterly dividend on the $2.375 Convertible Preferred Stock, Series A, of Thomasville payable August 1, 1968, has been declared and (ii) on July 24, 1968, a dividend in the amount of 20¢ per share was paid on the Common Stock of Thomasville and except for ordinary merit increases to personnel of Thomasville and its Subsidiaries in accordance with their past practice and the grant of stock options to employees covering 10,500 shares of Common Stock of Thomasville.

(h) All the property of every kind and description, the value of which was reflected on the books of Thomasville or any of its Subsidiaries as of May 31, 1968 (other than property transferred by any of them in the ordinary course of business since such date) and any property of a material nature which is used or available for use by them in the conduct of their respective businesses, is held by them, respectively, in fee, free and clear of mortgages, pledges, security interests and other liens and encumbrances, other than liens and encumbrances which do not materially affect the value of the property subject thereto or impair its usefulness in the conduct of their businesses, except as set forth in a list which has been furnished by Thomasville to Armstrong.

(i) Neither Thomasville nor any of its Subsidiaries has any contracts, leases or other commitments, the performance of which would have a materially adverse effect upon the financial condition or operations of Thomasville and its Subsidiaries; neither Thomasville nor any of its Subsidiaries has any contracts, leases or other commitments, written or oral, to be performed over a period of more than twelve months after the date hereof and involving a commitment of more than $25,000 per annum, or to be performed within twelve months from the date hereof and involving a commitment of more than $50,000, except as set forth in a list which has been furnished by Thomasville to Armstrong.

(j) Neither Thomasville nor any of its Subsidiaries is a party to or has been threatened with any litigation or governmental proceedings which, if decided adversely to such party, would have a materially adverse effect upon the transactions contemplated hereby or upon the financial condition or business of Thomasville and its Subsidiaries.

(k) Thomasville has furnished Armstrong with a schedule setting forth all of the fire, liability and other insurance that Thomasville and its Subsidiaries now have in force.

(l) Thomasville and its Subsidiaries have filed all tax returns as they have become due and have paid all taxes shown thereon to be due, and no assessment of additional taxes of a material amount have been made or threatened against Thomasville or any of its Subsidiaries or against any of their properties for which adequate reserves have not been made and reflected on the statement of consolidated financial condition of Thomasville and its Subsidiaries as of May 31, 1968, referred to hereinabove or which have not been paid since that date and were not reported to Armstrong prior to the date of this Agreement.

(m) The Federal income tax returns of Thomasville and its Subsidiaries, other than Caldwell Furniture Company, have either been audited or closed by the expiration of applicable periods of limitation for all periods through November 30, 1967, except that Federal income tax returns for the fiscal years ended November 30, 1966 and November 30, 1967, are now being audited.

(n) Thomasville and its Subsidiaries have conducted their businesses without infringement of any patent and are not in default with respect to any of their contracts or obligations.

(o) The execution and delivery of this Agreement [illegible] duly authorized and approved by the Board of Directors of Thomasville at a meeting thereof called for such purpose duly held on or prior to July 29, 1968. A true copy of the resolutions giving such authorization and approval has been furnished

by Thomasville to Armstrong. A special meeting of the shareholders of Thomasville has been called to be held on October 14, 1968, after at least twenty days' notice to all shareholders for the purpose of approving this Agreement.

(p) Neither the execution of this Agreement nor the consummation of the transaction provided for herein constitutes, or will result in, any breach of any of the terms, conditions or provisions, or constitute a default under, any indenture, agreement or other instrument to which Thomasville or any of its Subsidiaries is a party or by which it or any of them is bound.

(q) The information required to be included in the Armstrong proxy statement for the special meeting of the stockholders of Armstrong referred to herein, insofar as such information relates to Thomasville and its Subsidiaries, shall have been furnished to Armstrong by Thomasville and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

4.02. Representations and Warranties of Armstrong. Armstrong represents and warrants to Thomasville as follows:

(a) Armstrong is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania and has power to own and carry on its business as now being conducted and is qualified to do business and is in good standing in every jurisdiction in which the nature of such business makes such qualification necessary.

(b) Armstrong's authorized capital stock consists of 161,821 shares of No Par Preferred Stock, of which 161,522 shares of $3.75 Cumulative Preferred Stock constitutes a series, 1,500,000 shares of Voting Preferred Stock without par value and 30,000,000 shares of Common Stock of the par value of $1.00 per share. As of June 30, 1968, 118,179 shares of $3.75 Cumulative Preferred Stock and 10,771,253 shares of Common Stock were outstanding. As of that date, employees of Armstrong and its subsidiaries held options to purchase 101,572 shares of Common Stock of Armstrong. Except for such stock options, Armstrong has no commitment to issue any shares of its capital stock.

(c) The consolidated balance sheet of Armstrong and its subsidiaries as of December 31, 1967, and the statement of their consolidated earnings for the year ended December 31, 1967, certified by Peat, Marwick, Mitchell & Co., independent certified public accountants, copies of which have been furnished by Armstrong to Thomasville, fairly present the financial condition of Armstrong and subsidiaries on a consolidated basis and the results of their operations at the time and during the period indicated. Armstrong has also furnished to Thomasville an unaudited statement of the consolidated earnings of Armstrong and its subsidiaries for the three months' period ended March 31, 1968, which fairly presents the results of the operations of Armstrong and its subsidiaries for such period. There were no liabilities or obligations for the payment of money, contingent or otherwise, known or unknown, of a material nature of Armstrong and subsidiaries as of December 31, 1967, not reflected on the aforesaid balance sheet as of that date; since such date no materially adverse change in the financial condition or operations of Armstrong and subsidiaries has occurred; and since December 31, 1967, no liabilities or obligations for the payment of money, contingent or otherwise, known or unknown, have been incurred by Armstrong and subsidiaries, otherwise than in the ordinary course of business or as contemplated by this Agreement.

(d) Between December 31, 1967, and the date of delivery of this Agreement Armstrong has not declared or paid any dividends on its capital stock, other than the regular quarterly dividends on its $3.75 Cumulative Preferred Stock and quarterly cash dividends of 35¢ per share on its Common Stock.

(e) Neither Armstrong nor any of its subsidiaries has any contracts, leases or other commitments, the performance of which would have a materially adverse effect upon the financial condition or operations of Armstrong and its subsidiaries.

(f) Neither Armstrong, nor any of its subsidiaries is a party to or has been threatened with any litigation or governmental proceedings which, if decided adversely to such party, would have a materially

adverse effect upon the transactions contemplated hereby or upon the financial condition or business of Armstrong and its subsidiaries.

(g) Armstrong and its subsidiaries have filed all tax returns as they have become due and have paid all taxes shown thereon to be due, and no assessments of additional taxes of a material amount have been made or threatened against Armstrong or any of its subsidiaries or against any of their properties for which adequate reserves have not been made and reflected on the consolidated balance sheet of Armstrong and its subsidiaries as of December 31, 1967, referred to hereinabove or which have not been paid since that date and were not reported to Thomasville prior to the date of this Agreement.

(h) The execution and delivery of this Agreement have been duly authorized and approved by the Board of Directors of Armstrong at a meeting thereof held on July 29, 1968. A true copy of the resolutions giving such authorization and approval has been given by Armstrong to Thomasville. A special meeting of the stockholders of Armstrong has been called to be held on October 14, 1968, for the purpose of approving this Agreement.

(i) Information required to be included in the Thomasville proxy statement for the special meeting of the shareholders of Thomasville referred to herein, insofar as such information relates to Armstrong and its subsidiaries, shall have been furnished to Thomasville by Armstrong and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

ARTICLE FIVE

5.01. Covenants of Thomasville. Thomasville agrees that during the period from the date hereof to the Effective Date, unless Armstrong shall otherwise consent in writing:

(a) The business of Thomasville and its Subsidiaries will be conducted only in its usual manner. None of them will sell or otherwise dispose of any of its properties or other assets, purchase or otherwise acquire any property or assets, incur any liabilities or enter into any transaction, except, in each case, in the ordinary course of their business as heretofore conducted or as contemplated by this Agreement.

(b) Thomasville will not declare or pay any dividends or make any other distribution on its capital stock, except that Thomasville may declare and pay (i) the regular quarterly dividends on its $2.375 Convertible Preferred Stock, Series A, payable August 1, 1968, and November 1, 1968, and, if the Effective Date is on or after February 1, 1969, the regular quarterly dividend on such stock payable February 1, 1969, and (ii) a dividend in the amount of 26.66¢ per share on its Common Stock for the four months ended September 30, 1968, and, if the Effective Date is after the record date for the payment of the dividend on the Common Stock of Armstrong for any quarter commencing with the fourth quarter of 1968, Thomasville may declare and pay for such quarter a dividend on its Common Stock in an amount per share equal to seven-tenths of the dividend per share declared by Armstrong on its Common Stock for such quarter.

(c) Neither Thomasville nor any of its Subsidiaries will issue or make any commitment to issue any additional shares of its capital stock, except shares of Common Stock of Thomasville required to be issued upon conversion of its outstanding $2.375 Convertible Preferred Stock, Series A, or upon the exercise of employees' stock options outstanding on June 30, 1968.

(d) Thomasville and its Subsidiaries will use their best efforts to keep their business intact, to keep in faithful service their present officers and key employees and to preserve the goodwill of Thomasville and the Subsidiaries' suppliers and customers and others having business relations with them.

(e) Thomasville and its Subsidiaries will each permit Armstrong reasonable access by such representatives as it may elect, including Peat, Marwick, Mitchell & Co., to its plants, properties, books and records for the purpose of investigating its business and corporate records, verifying the representations and warranties to be made in this Agreement and the performance of the covenants and conditions herein stipulated.

(i) Thomasville and its Subsidiaries will each keep its properties adequately insured against fire and other risks ordinarily covered in a fire and extended coverage policy and maintain adequate insurance against other risks which customarily are insured against by persons operating similar businesses.

(g) Thomasville shall furnish to Armstrong the information referred to in Section 4.01(q) for use by Armstrong in its proxy statement.

5.02. Covenants of Armstrong. Armstrong agrees that during the period from the date hereof to the Effective Date, unless Thomasville otherwise shall consent in writing:

(a) Armstrong, by amendment of its Articles of Incorporation, will establish a series of its Voting Preferred Stock, such series to be designated "$2.375 Convertible Preferred Stock" consisting of 100,000 shares and having the rights and preferences set forth in Article 5th of the Articles of Incorporation, as amended, of Armstrong, a copy of which has been furnished by Armstrong to Thomasville, and in the form of resolution for the establishment of such series attached to this Agreement as Exhibit A. Dividends on shares of such series shall be cumulative from November 1, 1968, unless the Effective Date is on or after February 1, 1969 and prior to April 1, 1969, in which case such dividends shall be cumulative from February 1, 1969.

(b) Armstrong will not, except as contemplated by this Agreement, (i) amend its Articles of Incorporation, (ii) issue any stock, except in connection with employees' stock options, or (iii) make any distribution to its stockholders, other than the regular quarterly dividend payments on its $3.75 Cumulative Preferred Stock and cash dividends on its Common Stock.

(c) Armstrong shall furnish to Thomasville the information referred to in Section 4.02(i) for use by Thomasville in its proxy statement.

(d) Armstrong will use all reasonable efforts to have approved for listing on official notice of issuance by the New York Stock Exchange and the Pittsburgh Stock Exchange shares of its Common Stock to be issued (i) in the Merger, (ii) upon the conversion of its $2.375 Convertible Preferred Stock at the initial conversion price and (iii) upon the exercise of stock options to be assumed by Armstrong hereunder.

ARTICLE SIX

6.01. Conditions to Armstrong's Obligations. The obligations of Armstrong under this Agreement are subject to the satisfaction of the following conditions at or prior to the Effective Date:

(a) The representations and warranties of Thomasville contained in this Agreement shall be true at and as of the Effective Date as though such representations and warranties were made at and as of such time and there shall have been delivered to Armstrong as near the Effective Date as practicable a certificate or certificates to such effect signed by the proper officers of Thomasville.

(b) Thomasville shall have performed all of its agreements hereunder to be performed prior to the Effective Date and there shall have been delivered to Armstrong as near the Effective Date as practicable a certificate or certificates to such effect signed by the proper officers of Thomasville.

(c) The New York Stock Exchange and Pittsburgh Stock Exchange shall have approved for listing on official notice of issuance shares of Common Stock of Armstrong to be issued (i) in the Merger, (ii) upon conversion of the $2.375 Convertible Preferred Stock of Armstrong at the initial conversion price, and (iii) upon the exercise of stock options to be assumed by Armstrong hereunder.

(d) Armstrong shall have obtained from its counsel an opinion in form and substance satisfactory to it as to any legal matters involved in the transaction contemplated hereby.

(e) Armstrong shall have received assurance from the Securities and Exchange Commission satisfactory to Armstrong that the Surviving Corporation will be permitted to utilize "pooling of interests" accounting treatment in connection with the Merger.

(f) Thomasville shall have obtained all such written consents as may be necessary to permit it to transfer to Armstrong in the Merger all of its rights under contracts and leases, including, if required, the written consent of any governmental bodies or agencies.

(g) Each of the shareholders of Thomasville who prior to or at the time this Agreement is submitted to a vote of the shareholders of Thomasville is an affiliate, as defined in Rule 133 issued by the Securities and Exchange Commission under the Securities Act of 1933, shall have entered into an agreement with Armstrong to the effect that no shares of capital stock of Thomasville or Armstrong which he shall own or acquire prior to the Effective Date or to which he shall become entitled in the Merger will be disposed of by him in violation of the provisions of the Securities Act of 1933 and regulations thereunder and indemnifying Armstrong from any liability and expense resulting to Armstrong by reason of any sale or disposition by him of any such shares in violation of said Act or regulations.

(h) Armstrong shall have received a ruling from the United States Internal Revenue Service in form and substance satisfactory to Armstrong to the following effects:

(1) The Merger of Thomasville into Armstrong, followed by the transfer by Armstrong of the assets and liabilities of Thomasville to a new corporation as provided in Section 2.07 hereof, constitutes a reorganization under Sections 368(a)(1)(A) and 368(a)(2)(C) of the Internal Revenue Code, and Thomasville and Armstrong will each be a party to the reorganization within the meaning of 368(b).

(2) No gain or loss will be recognized pursuant to Sections 361(a) and 1032(a) to Thomasville, Armstrong or to the newly formed subsidiary of Armstrong.

(3) The conversion of the Thomasville employees' stock options into options to purchase Armstrong Common Stock will constitute the substitution of new options for the old options in a transaction to which Section 425(a) applies, will not be a modification of such options within the meaning of Section 425(h), will not affect the status of the options under Section 422(b) or 424(b), and will not constitute either an exercise of the options or a taxable event.

(4) The basis of the assets of Thomasville acquired by Armstrong and transferred to the newly formed subsidiary of Armstrong in the reorganization will, pursuant to Section 362(b), be the same basis of such assets in the hands of Thomasville immediately prior thereto, and under Section 1223(2), the holding period of such assets in the hands of the newly formed subsidiary of Armstrong will include the period during which they were held by Thomasville.

(5) The newly formed subsidiary of Armstrong will be deemed to be the acquiring corporation within the meaning of Section 381(a).

6.02. Conditions to Thomasville's Obligations. The obligations of Thomasville under this Agreement are subject to the satisfaction of the following conditions at or prior to the Effective Date:

(a) The representations and warranties of Armstrong contained herein shall be true at and as of the Effective Date as though such representations and warranties were made at and as of such time and there shall have been delivered to Thomasville as near the Effective Date as practicable a certificate or certificates to such effect signed by the proper officers of Armstrong.

(b) Armstrong shall have performed all of its agreements hereunder to be performed prior to the Effective Date and there shall have been delivered to Thomasville as near the Effective Date as practicable a certificate or certificates to such effect signed by the proper officers of Armstrong.

(c) The New York Stock Exchange and the Pittsburgh Stock Exchange shall have approved for listing upon official notice of issuance shares of Common Stock of Armstrong to be issued (i) in the Merger, (ii) upon conversion of the $2.575 Convertible Preferred Stock of Armstrong at the initial conversion price, and (iii) upon the exercise of stock options to be assumed by Armstrong hereunder.

(d) Thomasville shall have received a ruling from the United States Internal Revenue Service in form and substance satisfactory to Thomasville to the following effects:

(1) The merger of Thomasville into Armstrong, followed [illegible] under by Armstrong of the assets and liabilities of Thomasville to a new corporation as provided in Section 2.07 hereof, constitutes a reorganization under Sections 368(a)(1)(A) and 368(a)(2)(C) of the Internal Revenue Code, and Thomasville and Armstrong will each be a party to the reorganization within the meaning of Section 368(b).

(2) No gain or loss will be recognized pursuant to Sections 361(a) and 1032(a) to Thomasville, Armstrong or the newly formed subsidiary of Armstrong.

(3) Pursuant to Section 354(a)(1), no gain or loss will be recognized to the shareholders of Thomasville upon the exchange of their shares of Thomasville stock for shares of Armstrong stock, including fractional share interests in Armstrong Common Stock to which they may be entitled.

(4) The basis of the Armstrong stock received by the shareholders of Thomasville, including fractional interests to which they may be entitled in exchange for their Thomasville stock, will be the same in their hands as the basis for the Thomasville stock surrendered in exchange therefor pursuant to Section 358(a)(1), and pursuant to Section 1223(1) the holding period of the shares of Armstrong stock received by the shareholders of Thomasville will include the holding period of the shares of Thomasville stock surrendered, provided that the Thomasville stock constituted a capital asset in the hands of the Thomasville shareholders at the time of the exchange.

(5) If any fractional share interest in Armstrong Common Stock is sold on behalf of a Thomasville shareholder, gain or loss will be recognized to such shareholder measured by the difference between the basis of the fractional share interest and the proceeds of sale. If the fractional share interest was a capital asset in the hands of such shareholder, such gain or loss will constitute a capital gain or loss subject to the provisions and limitations of Subchapter P of Chapter 1 of the Internal Revenue Code.

(6) The shares of $2.375 Convertible Preferred Stock of Armstrong to be received by the Thomasville preferred shareholders who own no common stock of Armstrong immediately following the effective date of the transaction will not constitute "Section 306 Stock".

(7) Under the present provisions of the Internal Revenue Code, no gain or loss will be recognized upon the conversion by a Thomasville shareholder of shares of $2.375 Convertible Preferred Stock of Armstrong into shares of Armstrong Common Stock, except for cash, if any, received in lieu of a fractional share.

(8) Pursuant to Section 358(a)(1), the basis of the shares of Armstrong Common Stock received upon the conversion of shares of Armstrong $2.375 Convertible Preferred Stock will be the same as the basis of the shares of such Preferred Stock surrendered.

(9) Pursuant to Section 1223(1) the holding period of the shares of Armstrong Common Stock received upon the conversion of shares of Armstrong $2.375 Convertible Preferred Stock will include the holding period of the shares of such Preferred Stock surrendered, provided that such shares of Preferred Stock constituted a capital asset in the hands of the converting shareholder at the time of the exchange.

(10) The conversion of the Thomasville employees' stock options into options to purchase Armstrong Common Stock will constitute the substitution of new options for the old options in a transaction to which Section 425(a) applies, will not be a modification of such options within the meaning of Section 425(h), will not affect the status of the options under Section 422(b) or 424(b), and will not constitute either an exercise of the options or a taxable event.

(11) The newly formed subsidiary of Armstrong will be deemed to be the acquiring corporation within the meaning of Section 381(a).

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EXHIBIT 1

(e) Thomasville shall have received a copy of an opinion from counsel for Armstrong addressed to Armstrong to the effect that the shares of $2.375 Convertible Preferred Stock and Common Stock of Armstrong to be issued to the shareholders of Thomasville hereunder, the shares of Common Stock of Armstrong which will be covered by stock options assumed by Armstrong hereunder and the shares of Common Stock of Armstrong into which the $2.375 Convertible Preferred Stock of Armstrong shall be convertible will, when issued in accordance herewith, upon the exercise of such stock options or upon such conversion be duly and validly issued, fully paid and nonassessable.

(f) Thomasville shall have received from its counsel an opinion in form and substance satisfactory to it as to any other legal matters involved in the transaction contemplated hereby.

ARTICLE SEVEN

7.01. **Termination and Amendment.** The Merger shall not be consummated and this Agreement shall be terminated: (i) if, at the respective meetings of the shareholders of Armstrong and Thomasville to be held as herein provided, this Agreement shall not be approved and adopted by the shareholders of Armstrong and Thomasville as set forth in Section 1.04; (ii) at the election of Armstrong, if any one or more of the conditions to its obligations contained in Section 6.01 shall not be fulfilled or if an action or proceeding shall have been instituted or threatened to restrain or prohibit the Merger; (iii) at the election of Thomasville, if any one or more of the conditions to its obligations contained in Section 6.02 shall not be fulfilled; (iv) at the election of Armstrong, if the holders of more than 5% of the outstanding Common Stock of Thomasville shall object to the Merger, shall not vote in favor thereof and shall demand the fair value of their shares, all in accordance with Section 55-113 of the North Carolina Business Corporation Act; or (v) if the filings of Articles of Merger as contemplated in Section 1.04 hereof shall not have been made prior to April 1, 1969.

7.02. **Abandonment of Merger.** The Merger may be abandoned and this Agreement may be terminated at any time prior to the Effective Date by mutual consent of the Boards of Directors of the Constituent Corporations.

ARTICLE EIGHT

8.01. **Amendments.** Any of the terms or conditions of this Agreement may be waived at any time by the Constituent Corporation which is, or the shareholders of which are, entitled to the benefit thereof, by action taken by the Board of Directors of such Constituent Corporation, or any of such terms or conditions may be amended or modified in whole or in part at any time prior to the votes of the shareholders of the Constituent Corporations hereon by an agreement in writing, executed in the same manner as this Agreement after authorization to do so by the Boards of Directors of the Constituent Corporations, provided, however, that such actions shall be taken only if, in the judgment of the Board of Directors taking the action, such waiver or such amendment or modification will not have a materially adverse effect on the benefits intended under this Agreement to the shareholders of such corporation.

ARTICLE NINE

9.01. **Termination of Representations and Warranties.** The representations and warranties of Thomasville and Armstrong contained in this Agreement shall not survive the Effective Date.

9.02. **Thomasville Pension Plans.** Neither the Merger nor the transfer to the new Armstrong subsidiary as referred to in Section 2.07 hereof shall be deemed to result in the termination of any employees' pension plan of Thomasville, but such subsidiary shall take the place of Thomasville in regard to each such plan, including but not restricted to the rights of Thomasville with respect to the amendment or termination of the plan.

9.03. **Thomasville Foundation.** Thomasville, acting through its Board of Directors, shall amend the Trust Agreement between Thomasville and Wachovia Bank and Trust Company dated December 31, 1963, relating to the "Thomasville Furniture Industries Foundation" so that on and after the Effective Date "the Company", as used therein, shall mean the new Armstrong subsidiary as referred to in Section 2.07 hereof until the Trust Agreement shall be further amended as provided therein.

9.04. **Notices.** All notices or other communications to Armstrong hereunder shall be in writing and mailed or delivered to it at its principal office in Lancaster, Pennsylvania, Attention: President. All notices or other communications to Thomasville hereunder shall be in writing and mailed or delivered to it at its principal office in Thomasville, North Carolina, Attention: President.

9.05. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

9.06. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original but such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF Armstrong Cork Company and Thomasville Furniture Industries, Inc. have duly executed this Joint Plan and Agreement of Merger as of the day and year first above written.

Attest:

ARMSTRONG CORK COMPANY

ALBERT H. SHEAFFER
Secretary

By JAMES H. PINNS
President

Attest:

THOMASVILLE FURNITURE INDUSTRIES, INC.

J. C. DOBERTY
Assistant Secretary

By TOM A. FINCH
President

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EXHIBIT 1

Exhibit A

Resolution for the Establishment of $2.375 Convertible Preferred Stock, as a Series of Voting Preferred Stock

RESOLVED that pursuant to authority conferred upon the Board of Directors by Article 5th of the Articles of Incorporation, as amended, of the corporation, there is hereby established a series of Voting Preferred Stock of the corporation consisting of 100,000 shares as follows:

(1) The shares of such series shall be designated $2.375 Convertible Preferred Stock.

(2) The rate of dividend payable upon the shares of $2.375 Convertible Preferred Stock shall be $2.375 per share per annum and the dividends upon the shares thereof issued prior to February 1, 1969, shall be cumulative from November 1, 1968, and upon shares issued on or after February 1, 1969 and prior to April 1, 1969, shall be cumulative from February 1, 1969.

(3) No shares of $2.375 Convertible Preferred Stock may be redeemed on or before April 2, 1973. The redemption prices applicable to shares of $2.375 Convertible Preferred Stock shall be as follows: if redeemed after April 2, 1973 but on or before April 2, 1974—$52.50 per share; if redeemed after April 2, 1974 but on or before April 2, 1975—$52.00 per share; if redeemed after April 2, 1975 but on or before April 2, 1976—$51.50 per share; if redeemed after April 2, 1976 but on or before April 2, 1977—$51.00 per share; if redeemed after April 2, 1977 but on or before April 2, 1978—$50.50 per share; and if redeemed after April 2, 1978—$50.00 per share, plus, in each case, dividends which have accrued and have not been paid or declared and a sum sufficient for the payment thereof set apart, as provided in said Article 5th of the Articles of Incorporation, as amended.

(4) The amounts payable to the holders of $2.375 Convertible Preferred Stock in the event of any voluntary dissolution, liquidation or winding up of the affairs of the corporation, before any distribution shall be made to the holders of Common Stock, shall be as follows: if such dissolution, liquidation or winding up shall occur on or before April 2, 1973—$52.50 per share; and if such dissolution, liquidation or winding up shall occur after April 2, 1973, an amount per share equal to the redemption price per share at that time set forth in section (3) hereof (exclusive of accrued dividends), plus in each case all dividends which have accrued and have not been paid or declared and a sum sufficient for the payment thereof set apart, as provided in said Article 5th. In the event of any involuntary dissolution, liquidation or winding up of the affairs of the corporation the amount payable to the holders of $2.375 Convertible Preferred Stock, before any payment or distribution shall be made to the holders of Common Stock, shall be $50.00 per share, plus dividends which have accrued and which have not been paid or declared and a sum sufficient for the payment thereof set apart, as provided in said Article 5th.

(5) The holders of shares of $2.375 Convertible Preferred Stock shall have the right, at their option, to convert such shares into shares of Common Stock of the corporation at any time on and subject to the following terms and conditions:

(i) The shares of $2.375 Convertible Preferred Stock shall be convertible at the office of any Transfer Agent for the $2.375 Convertible Preferred Stock or, if there is no such Transfer Agent, at the principal office of the corporation, and at such other office or offices, if any, as the Board of Directors may designate, into fully paid and non-assessable shares (calculated as to each conversion to the nearest 1/100 of a share) of Common Stock of the corporation, at the conversion price, determined as hereinafter provided, in effect at the time of conversion, each share of $2.375 Convertible Preferred Stock being taken at $50 for the purpose of such conversion. The price at which shares of Common Stock shall be delivered upon conversion (herein called the "conversion price") shall be initially $47.62 per share of Common Stock. The conversion price shall be reduced in certain instances as provided in paragraphs (iii), (ix) and (x) below, and shall be increased in certain instances as provided in paragraph (x) below. No payment or adjustment shall be made upon any conversion on account of any dividends accrued on the shares of $2.375

Convertible Preferred Stock surrendered for conversion or on account of any dividends on the Common Stock issued upon such conversion.

(ii) In order to convert shares of $2.375 Convertible Preferred Stock into Common Stock the holder thereof shall surrender at any office hereinabove mentioned the certificate or certificates therefor, duly endorsed to the corporation or in blank, and give written notice to the corporation at said office that he elects to convert such shares. Shares of $2.375 Convertible Preferred Stock shall be deemed to have been converted immediately prior to the close of business on the day of the surrender of such shares for conversion as provided above, and the person or persons entitled to receive the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Stock at such time. As promptly as practicable on or after the conversion date, the corporation shall issue and shall deliver at said office a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion, together with a scrip certificate for, or cash in lieu of, any fraction of a share, as hereinafter provided, to the person or persons entitled to receive the same. In case shares of $2.375 Convertible Preferred Stock are called for redemption, the right to convert such shares shall cease and terminate at the close of business on the second full business day prior to the date fixed for redemption, unless default shall be made in payment of the redemption price.

(iii) In case the conversion price in effect immediately prior to the close of business on any day shall exceed by fifty cents or more the amount determined at the close of business on such day by dividing:

(x) a sum equal to (A) 10,771,253 multiplied by $47.62 (being the initial conversion price), plus (B) the aggregate of the amounts of all consideration received by the corporation upon the issuance of Additional Shares of Common Stock (as hereinafter defined), minus (C) the aggregate of the amounts of all dividends and other distributions which have been paid or made after June 30, 1968 on Common Stock of the corporation, other than in cash out of its earned surplus or in Common Stock of the corporation, by

(y) the sum of (A) 10,771,253 and (B) the number of Additional Shares of Common Stock which shall have been issued, the conversion price shall be reduced, effective immediately prior to the opening of business on the next succeeding day, by an amount equal to the amount by which such conversion price shall exceed the amount so determined. The foregoing amount of fifty cents (or such amount as theretofore adjusted) shall be subject to adjustment as provided in paragraphs (ix) and (x) below, and such amount (or such amount as theretofore adjusted) is referred to in such paragraphs as the "Differential Amount."

(iv) The terms "Additional Shares of Common Stock" as used herein shall mean all shares of Common Stock issued by the corporation after June 30, 1968 (including shares deemed to be "Additional Shares of Common Stock" pursuant to paragraphs (viii) and (x) below), whether or not subsequently reacquired or retired by the corporation, other than:

(x) shares issued by the corporation in the merger of the corporation and Thomasville Furniture Industries, Inc. and shares issued upon conversion of shares of $2.375 Convertible Preferred Stock issued by the corporation in such merger;

(y) shares issued upon exercise of options granted or to be granted pursuant to the corporation's present or future employee stock option plans, but not exceeding in the aggregate 150,000 shares of Common Stock of the corporation as constituted on June 30, 1968 (or such greater or lesser number of shares as may result from the proportionate adjustment of such 150,000 shares of Common Stock pursuant to antidilution provisions of such options or plans); and

(z) shares issued by way of dividend or other distribution on shares of Common Stock excluded from the definition of Additional Shares of Common Stock by the foregoing clauses (x) or (y) or this clause (z) or on shares of Common Stock resulting from any subdivision or combination of shares of Common Stock so excluded.

The sale or other disposition of any shares of Common Stock or other securities held in the treasury of the corporation at the close of business on June 30, 1968, or of any securities resulting from any reclassification or reclassifications of such shares or other securities which were effected while they were held in the treasury of the corporation, shall be deemed an issuance thereof; provided, however, that if any such share or other security is sold or disposed of and subsequently reacquired by the corporation, no future sale or other disposition thereof shall be deemed an issuance thereof. Except as provided in the preceding sentence, the sale or other disposition, including any such sale or disposition in connection with the employee stock option plans of the corporation, of any shares of Common Stock or other securities held in the treasury of the corporation shall not be deemed an issuance thereof.

(v) In case of the issuance of Additional Shares of Common Stock (including shares deemed to be Additional Shares of Common Stock pursuant to paragraph (viii) below) for a consideration part or all of which shall be cash, the amount of the cash consideration therefor shall be deemed to be the amount of cash received by the corporation for such shares (or, if such Additional Shares of Common Stock are offered by the corporation for subscription, the subscription price, or, if such Additional Shares of Common Stock are sold to underwriters or dealers for public offering without a subscription offering, the initial public offering price), without deducting therefrom any compensation or discount in the sale, underwriting or purchase thereof by underwriters or dealers or others performing similar services or for any expenses incurred in connection therewith.

(vi) In case of the issuance (otherwise than as a dividend or other distribution on any stock of the corporation or upon conversion or exchange of other securities of the corporation) of Additional Shares of Common Stock (including shares deemed to be Additional Shares of Common Stock pursuant to paragraph (viii) below) for a consideration part or all of which shall be other than cash, the amount of the consideration therefor other than cash shall be deemed to be the value of such consideration as determined by the Board of Directors, irrespective of the accounting treatment thereof. The reclassification of securities other than Common Stock into securities including Common Stock shall be deemed to involve the issuance for a consideration other than cash of such Common Stock immediately prior to the close of business on the date fixed for the determination of shareholders entitled to receive such Common Stock.

(vii) Additional Shares of Common Stock issuable by way of dividend or other distribution on any class of capital stock of the corporation shall be deemed to have been issued without consideration, and shall be deemed to have been issued immediately prior to the close of business on the date fixed for the determination of shareholders entitled to receive such dividend or other distribution.

A dividend or other distribution in cash or in property (including any dividend or other distribution in securities other than Common Stock) shall be deemed to have been paid or made immediately prior to the close of business on the date fixed for the determination of shareholders entitled to receive such dividend or other distribution and the amount of such dividend or other distribution in property shall be deemed to be the value of such property as of the date of the adoption of the resolution declaring such dividend or other distribution, as determined by the Board of Directors at or as of that date. In the case of such dividend or other distribution on Common Stock which consists of securities which are convertible into or exchangeable for shares of Common Stock, such securities shall be deemed to have been issued for a consideration equal to the value thereof as so determined.

If, upon the payment of any dividend or other distribution in cash or in property (excluding Common Stock but including all other securities), outstanding shares of Common Stock are cancelled or required to be surrendered for cancellation, on a pro rata basis, the excess of the number of shares of Common Stock outstanding immediately prior thereto over the number to be outstanding immediately thereafter (less that portion of such excess attributable to the cancellation of shares excluded from the definition of Additional Shares of Common Stock by clauses (x), (y) or (z) of paragraph (iv) above, shall be deducted from the sum computed pursuant to clause (y) of paragraph (iii) above for the purpose of all determinations under such paragraph (iii) made immediately prior to the close of business on the date fixed for the determination of shareholders entitled to receive such dividend or other distribution and at any time thereafter.

The reclassification (including any reclassification upon a consolidation or upon a merger in which the corporation is the continuing corporation) of Common Stock into securities including other than Common Stock shall be deemed to involve (a) a distribution on Common Stock of such securities other than Common Stock made immediately prior to the close of business on the effective date of the reclassification, and (b) a combination or subdivision, as the case may be, of the number of shares of Common Stock outstanding immediately prior to such reclassification into the number of shares of Common Stock outstanding immediately thereafter.

The issuance by the corporation of rights or warrants to subscribe for or purchase securities of the corporation shall not be deemed to be a dividend or distribution of any kind.

(viii) In case at any time the corporation shall in any manner issue or grant any rights to subscribe for or to purchase, or any options for the purchase of, (A) Common Stock (other than options or rights to purchase or acquire shares the issuance of which is excluded from the definition of Additional Shares of Common Stock) or (B) Convertible Securities, or shall issue or sell Convertible Securities, and the price per share for which Common Stock is issuable upon the exercise of such rights or options or upon conversion or exchange of such Convertible Securities at the time such Convertible Securities first become convertible or exchangeable (determined by dividing

(x) in the case of an issue or grant of any such rights or options, the total amount, if any, received or receivable by the corporation as consideration for the issue or grant of such rights or options, plus the minimum aggregate amount of additional consideration payable to the corporation upon the exercise of such rights or options, plus, in the case of such Convertible Securities purchased upon exercise of such rights or options, the minimum aggregate amount of additional consideration, if any, payable to the corporation upon the conversion or exchange of such Convertible Securities at the time such Convertible Securities first become convertible or exchangeable, or

(y) in the case of an issue or sale of Convertible Securities other than where the same are issuable upon the exercise of any such rights or options, the total amount, if any, received or receivable by the corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the corporation upon the conversion or exchange of such Convertible Securities at the time such Convertible Securities first become convertible or exchangeable by, in either such case

(z) the total maximum number of shares of Common Stock issuable upon the exercise of such rights or options or upon the conversion or exchange of such Convertible Securities at the time such Convertible Securities first become convertible or exchangeable)

shall be less than the current conversion price, then the total maximum number of shares of Common Stock issuable upon the exercise of such rights or options or upon conversion or exchange of the total maximum amount of such Convertible Securities at the time such Convertible Securities first become convertible or exchangeable shall (as of the date of issue or grant of such rights or options or, in the case of the issue or sale of Convertible Securities other than where the same are issuable upon the exercise of rights or options, as of the date of such issue or sale) be deemed to be Additional Shares of Common Stock for the purposes of paragraph (iv) above and to have been issued and outstanding at the time such Convertible Securities first become convertible or exchangeable and to have been issued for said price per share; provided that, subject to the provisions of the second paragraph of this paragraph (viii), no further adjustment of the conversion price shall be made upon the actual issue of any such Common Stock or Convertible Securities or upon the conversion or exchange of any such Convertible Securities.

In the event of an adjustment in the purchase price per share of Common Stock provided for in any options or rights referred to above in this paragraph (viii) or in the consideration to be received by the corporation upon the conversion or exchange of any Convertible Securities referred to above in this paragraph (viii), the current conversion price shall forthwith be readjusted to such amount as would have obtained had the adjustment in such purchase price or consideration been initially reflected upon the issu-

ance of such options, rights or Convertible Securities, but such readjustment shall be made only to the extent that such options or rights remain outstanding or unexercised and such Convertible Securities remain outstanding and unconverted and unexchanged, provided, however, that in no event shall any such readjustment increase the current conversion price to an amount in excess of the initial conversion price as increased only in accordance with the provisions of paragraph (x) below. Upon the expiration of such options or rights or the termination of the right to convert or exchange any such Convertible Securities, the current conversion price shall forthwith be readjusted to such amount as would have obtained had the adjustment made upon the issuance of such options, rights or Convertible Securities been made upon the basis of the issuance of only the number of shares of Common Stock actually delivered upon the exercise of such options or rights or the conversion or exchange of such Convertible Securities, provided, however, that in no event shall any such readjustment increase the current conversion price to an amount in excess of the initial conversion price as increased only in accordance with the provisions of paragraph (x) below. Upon any readjustment of the current conversion price pursuant to the provisions of this paragraph, such readjustment shall thereafter, for all purposes hereof, be deemed to have become effective at the time of the next preceding adjustment of the conversion price otherwise than pursuant to the provisions of this paragraph.

(ix) In case Additional Shares of Common Stock are issued as a dividend or other distribution on any class of capital stock of the corporation, the conversion price and the Differential Amount in effect at the opening of business on the day following the date fixed for determination of shareholders entitled to receive such dividend or other distribution shall be reduced by multiplying each of them by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination and the denominator shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution, such reductions to become effective immediately after the opening of business on the day following the date fixed for such determination. For the purposes of this paragraph (ix), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the corporation unless such dividend or other distribution is effected with respect to such shares but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock (other than shares of Common Stock which, upon issuance, would not constitute Additional Shares of Common Stock). The adjustment of the conversion price and the Differential Amount provided for in this paragraph shall be the only adjustment made by reason of any such dividend or distribution but the Additional Shares of Common Stock issued as such dividend or other distribution for the purpose of future calculations under paragraph (iii) above, shall be included as Additional Shares of Common Stock on the basis set forth in clause (vii) above.

(x) In case outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the conversion price and the Differential Amount in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall each be proportionately reduced, and, conversely, in case outstanding shares of Common Stock shall each be combined into a smaller number of shares of Common Stock, the conversion price and the Differential Amount in effect at the opening of business on the day following the day upon which such combination becomes effective shall each be proportionately increased, such reductions or increases as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective. In the event of any such subdivision, the number of shares of Common Stock outstanding immediately thereafter, to the extent of the excess thereof over the number outstanding immediately prior thereto (less that portion of such excess attributable to the subdivision of shares excluded from the definition of Additional Shares of Common Stock by clauses (x), (y) or (z) of paragraph (iv) above), shall be deemed to be "Additional Shares of Common Stock" and to have been issued immediately after the opening of business on the day following the day upon which such subdivision shall have become effective and without consideration. In the event of any such combination, the excess of the number of shares of Common Stock outstanding immediately prior thereto over the number outstanding immediately thereafter (less that portion of such excess attributable to the combination of shares excluded from the definition of Additional Shares of Common Stock by clauses (x), (y) or (z) of paragraph (iv) above), shall be deducted from the sum computed pursuant to clause (y) of paragraph (iii) above for the purpose

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of all determinations under such paragraph (iii) made on any day after the day upon which such combination becomes effective. For the purpose of this paragraph (x), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the corporation continuously since the close of business on June 30, 1968, including shares resulting from any reclassification or reclassifications of any such shares. Except as provided in the preceding sentence, shares of Common Stock held in the treasury of the corporation and shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock (other than shares of Common Stock which, upon issuance, would not constitute Additional Shares of Common Stock) shall be considered outstanding for the purposes of this paragraph (x).

(xi) Whenever the conversion price is adjusted as herein provided:

(x) the corporation shall compute the adjusted conversion price in accordance with this section (5) and shall prepare a certificate signed by the Treasurer of the corporation setting forth the adjusted conversion price and showing in reasonable detail the facts upon which such adjustment is based, including a statement of the consideration received or to be received by the corporation for, and the amount of, any Additional Shares of Common Stock issued since the last such adjustment, and such certificate shall forthwith be filed with the Transfer Agent or Agents for the $2.375 Convertible Preferred Stock, if any; and

(y) a notice stating that the conversion price has been adjusted and setting forth the adjusted conversion price shall forthwith be required, and as soon as practicable after it is required, such notice shall be published at least once in a daily newspaper in the City of New York, N. Y., and shall be mailed to the holders of record of the outstanding shares of $2.375 Convertible Preferred Stock; provided, however, that if within ten days after the completion of mailing of such a notice, an additional notice is required, such additional notice shall be deemed to be required pursuant to this clause (y) as of the opening of business on the tenth day after such completion of mailing and shall set forth the conversion price as adjusted at such opening of business, and upon the publication and mailing of such additional notice no other notice need be given of any adjustment in the conversion price occurring at or prior to such opening of business and after the time that the next preceding notice given by publication and mail became required.

(xii) In case:

(a) the corporation shall declare a dividend (or any other distribution) on its Common Stock payable otherwise than in cash out of its earned surplus; or

(b) the corporation shall authorize the granting to the holders of its Common Stock of rights to subscribe for or purchase any shares of capital stock of any class or of any other rights; or

(c) of any reclassification of the capital stock of the corporation (other than a subdivision or combination of its outstanding shares of Common Stock), or of any consolidation or merger to which the corporation is a party and for which approval of any shareholders of the corporation is required, or of the sale or transfer of all or substantially all of the assets of the corporation; or

(d) of the voluntary or involuntary dissolution, liquidation or winding up of the corporation;

then the corporation shall cause to be mailed to the Transfer Agent or Agents, if any, for $2.375 Convertible Preferred Stock and to the holders of record of the outstanding shares of $2.375 Convertible Preferred Stock, at least twenty days (or ten days in any case specified in clause (a) or (b) above) prior to the applicable record date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up.

(xiii) The corporation shall at all times reserve and keep available, free from pre-emptive rights, out of its authorized but unissued Common Stock, for the purpose of effecting the conversion of the shares of $2.375 Convertible Preferred Stock, the full number of shares of Common Stock then deliverable upon the conversion of all shares of $2.375 Convertible Preferred Stock then outstanding. If any shares of Common Stock required to be reserved for purposes of conversion of $2.375 Convertible Preferred Stock hereunder, require registration with or approval of any governmental authority under any Federal or State law before such shares may be issued upon conversion, the corporation will in good faith and as expeditiously as possible endeavor to cause such shares to be duly registered or approved, as the case may be.

(xiv) No fractional shares of Common Stock shall be issued upon conversion, but, instead of any fraction of a share which would otherwise be issuable, the corporation shall, at its option, either

(x) issue non-dividend bearing and non-voting scrip certificates for such fraction, such certificates to be in such form and to contain such terms and conditions as the Board of Directors shall at any time or from time to time in its discretion fix and determine, provided that the certificates shall be exchangeable, within such period (which shall end not less than two years following the date of issue thereof) as the Board of Directors shall determine, together with other scrip certificates issued upon conversion of shares of $2.375 Convertible Preferred Stock, for stock certificates representing a full share or shares, and upon the expiration of such period shall be exchangeable for cash, as provided in the scrip certificates, within such further period (which shall end not less than six years following the date of issue of such certificates) as the Board of Directors shall determine; or

(y) pay a cash adjustment in respect of such fraction in an amount equal to the same fraction of the market price per share of Common Stock (as determined by the Board of Directors) at the close of business on the day of conversion.

(xv) The corporation will pay any and all taxes that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of shares of $2.375 Convertible Preferred Stock pursuant hereto. The corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of $2.375 Convertible Preferred Stock so converted were registered, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the corporation the amount of any such tax, or has established, to the satisfaction of the corporation, that such tax has been paid.

(xvi) For the purpose of this section (5), the term "Common Stock" shall include any stock of any class of the corporation which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the corporation, and which is not subject to redemption by the corporation. However, shares issuable on conversion of shares of $2.375 Convertible Preferred Stock shall include only shares of the class designated as Common Stock of the corporation as of June 30, 1968, or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the corporation and which are not subject to redemption by the corporation; provided that if at any time there shall be more than one such resulting class, the shares of each such class then issuable upon conversion of the $2.375 Convertible Preferred Stock shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications. For the purpose of this section (5), the term "Convertible Securities" shall include any evidences of debt or stock of any class which are convertible into, or exchangeable for, Common Stock.

SECTION 55-113 OF THE GENERAL STATUTES OF NORTH CAROLINA

§ 55-113. Rights of objecting shareholders upon fundamental changes and certain exchanges of shares.—(a) As used in this section:

(1) "Sale of assets for shares" means a sale, exchange or other disposition of all, or substantially all, the property and assets of a corporation, if made for, or substantially for, shares of another corporation, foreign or domestic.

(2) "Corporation" includes, if the context so indicates, the successor corporation which acquires the property of the predecessor corporation upon merger, consolidation or sale of assets for shares.

(3) With respect to offers of exchange of shares which entitle the preferred shareholders designated in G. S. 55-102 to rights under this section, the term "effective date of the exchange" means the date on which the corporation first actually consummated such an exchange of shares or, in case it reserved the right to postpone the operation or effectiveness of all acceptances of its offer of exchange, the date on which it declared the acceptance operative or effective.

(b) Any shareholder designated in G. S. 55-101 (b) as having rights under this section in connection with amendment of the charter or designated in G. S. 55-112 (b) as having rights under this section in connection with dissolution and liquidation of assets in kind, or any shareholder of a corporation effecting a merger, consolidation or sale of assets for shares may give to the corporation, prior to or at the meeting of the shareholders to which the proposal of amendment, dissolution, merger, consolidation or sale of assets for shares is submitted to a vote, written notice that he objects to such proposal. Within twenty days after the date on which the vote was taken, such shareholder may, unless he voted in person or by proxy in favor of the proposal, make written demand on the corporation for payment of the fair value of his shares. Such demand shall state the number and class of shares owned by him. In addition to any other right he may have in law or equity, a shareholder giving such notice shall be entitled, if and when the amendment, dissolution, merger, consolidation or sale of assets for shares is effected, to be paid by the corporation the fair value of his shares, as of the day prior to the date on which the vote was taken, subject only to the surrender by him of the certificate representing his shares.

(c) Any holder of preferred shares designated in G. S. 55-102 as having a right to payment for his shares in connection with an offer of exchange of securities may, within twenty days after the date when the offer was mailed or otherwise reasonably dispatched to him, give to the corporation written notice that he objects to the terms of said offer of exchange and that he demands payment for his shares. Such notice shall state the number and class of shares owned by him. Twenty days after the effective date of the exchange or twenty days after the date of mailing or otherwise reasonably dispatching such notice, whichever date is later, a shareholder giving such notice shall, in addition to any other right he may have in law or equity, be entitled to be paid by the corporation the fair value of his shares as of the day preceding the mailing or otherwise reasonably dispatching of the notice, unless all exchange or agreements to exchange theretofore made shall have been rescinded, within the applicable twenty-day period above mentioned, subject only to the surrender by him of his certificate representing his shares.

(d) If within thirty days after the date upon which the objecting shareholder becomes entitled to payment of his shares under subsections (b) and (c) of this section the value of the shares is agreed upon between the shareholder and the corporation, payment therefor shall be made within sixty days after the agreement, upon surrender of the certificate representing the shares, whereupon the shareholder shall cease to have any interest in such shares or in the corporation.

(e) If within the thirty-day period mentioned in subsection (d) of this section the shareholder and the corporation do not agree as to the value of the shares the shareholder may, within sixty days after the expiration of the thirty-day period, file a petition in the superior court of the county of the registered office of the corporation asking for the appointment by the clerk of three qualified and disinterested appraisers to appraise the fair value of the shares. A summons as in other cases of special proceedings, together with a copy of the petition, shall be served on the corporation at least ten days prior to the

hearing of the petition by the court. The award of the appraisers, or a majority of them, if no exceptions be filed thereto within ten days after the award shall have been filed in court, shall be confirmed by the court, and when confirmed shall be final and conclusive, and the shareholder upon depositing the proper share certificates in court, shall be entitled to judgment against the corporation for the appraised value thereof as of the date prescribed in this section, together with interest thereon to the date of such confirmation. If either party files exceptions to such award within ten days after the award shall have been filed in court, the case shall be transferred to the civil issue docket of the superior court for trial during the term and shall be prosecuted in the same manner, as near as may be practicable, as is provided in chapter 40 for the trial of cases under the eminent domain law of this State, and with the same right of appeal to the Supreme Court as is permitted in said chapter. The court shall assess the cost of said proceedings as it shall deem equitable. The fair value of any shares entitled to preference on liquidation shall in no event be found to be less than two-thirds of the amount of the preference to which said shares would have been entitled on a voluntary liquidation on the date herein prescribed for determining fair value if under the corporate change giving rise to the preferred shareholder's rights of payment any shares junior thereto retain a participation in the corporation without payment for such retention, or if the participations received by them upon any payment for such retention is found to exceed in value the amount of the said payment. Upon payment of the judgment the shareholder shall cease to have any interest in the shares or in the corporation and the corporation shall be entitled to have said share certificates surrendered to it by the clerk of court for cancellation. Unless the shareholder shall file such petition within the time herein prescribed, he and all persons claiming under him shall have no right of payment hereunder but in that event nothing herein shall impair his status as shareholder.

(f) If in the notice sent to shareholders in connection with the meeting to vote upon a proposed amendment of the charter, dissolution, merger, consolidation or sale of assets for shares or if in the offer of exchange of securities described in G. S. 55-102 no reference is made as required by this chapter to the provisions of this section, any shareholder entitled to but who did not avail himself of the provisions of this section, unless he voted for the proposal or accepted the offer of exchange of securities, is entitled, if he so demands in writing within one year after the effective date of the amendment, dissolution, merger, consolidation, sale of assets for shares or exchange of securities in question, to recover from the corporation any damage which he suffered from failure of the corporation to make the aforesaid reference.

(g) The liability to pay for shares or to pay damages imposed by this section on a corporation extends to the successor corporation which acquires the assets of the predecessor, whether by merger, consolidation or sale of assets for shares.

(h) Shares acquired by a corporation pursuant to payment of the agreed value thereof or to payment of the judgment entered therefor, as in this section provided, may be held and disposed of by the corporation as in the case of other treasury shares.

(i) The provisions of this section shall not apply to a merger if on the date of the filing of the articles of merger the surviving corporation is the owner of all the outstanding shares of the other corporation or corporations, domestic or foreign, participating in the merger and if such merger makes no changes in the relative rights of the shareholders of the surviving corporation.

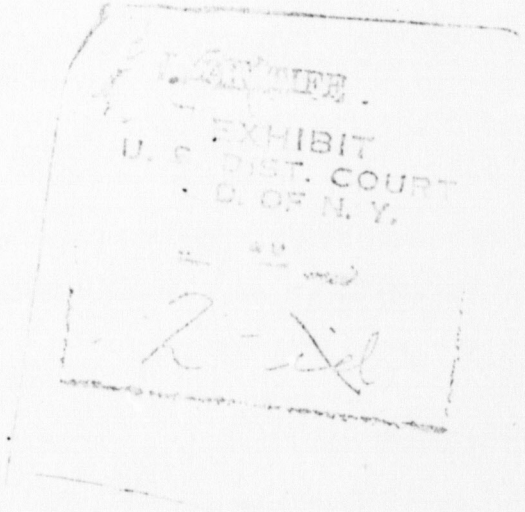
EXHIBIT
DIST. COURT
OF N. Y.

0081900

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OF
THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 1978 Commission File Number 1-2116

ARMSTRONG CORK COMPANY
(Exact name of registrant as specified in its charter)

Pennsylvania	23-0366390
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.

Liberty & Charlotte Streets, Lancaster, Pennsylvania	17604
(Address of principal executive offices)	(Zip Code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
$6.50 Cumulative Preferred Stock (without par value)	New York Stock Exchange and Pittsburgh Stock Exchange
Common Stock ($1 par value)	

Securities registered pursuant to Section 12(g) of the Act:

None

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Item 1. Number of Equity Security Holders

Title of Class	Number of Holders as of December 31, 1968
$3.75 cumulative preferred stock (without par value)	951
$4.75 cumulative convertible series (without par value)	10
Common stock ($1 par value)	10,603

Item 2. Increases and Decreases in Outstanding Equity Securities

	Common stock - par value $1 per share		
	Shares issued	Treasury shares	Shares outstanding
Balance 12/31/67 as previously reported	10,766,617	38,789	10,728,828
Issued in accordance with a Joint Plan and Agreement of Merger in which Thomasville Furniture Industries, Inc. was merged with and into the Company as of November 1, 1968, in a pooling of interests transaction	1,922,011	-	1,922,011
Balance 12/31/67 as restated	12,688,628	38,789	12,650,841
Issued under the Company's stock option plans (1)	25,680	-	25,680
Issued by Thomasville Furniture Industries, Inc. prior to acquisition (2)	9,000	-	9,000
Shares, with a cost of $1,408,560, used in conversion of subordinated debentures with a net book value of $981,170	-	(28,726)	28,726
Shares, with a cost of $51,921 sold to holders of options for $28,206	-	(1,062)	1,062
Balance 12/31/68	12,723,548	7,001	12,716,547

(1) Newly-issued shares sold to holders of options under the Company's Employees' Stock Option and Purchase Plan, described in Registration Statement Number 2-12300 and amendments thereto and the Employees' Stock Option Plan of 1964, described in Registration Statement Number 2-27420 and amendments thereto.

(2) Stock issued by Thomasville Furniture Industries, Inc. prior to merger in equivalent shares of Armstrong Cork Company Common Stock, in connection with options originally granted by Thomasville. The aggregate cash proceeds received for such shares was $430,794. The equivalent Armstrong option price per share varied from a minimum of $12.78 to a maximum of $48.42.

EXHIBIT 2

[illegible] shares of $3.75 convertible voting preferred stock outstanding [illegible] were issued in connection with the merger of Thomasville Furniture Industries, Inc.

[illegible] no change in the $3.75 cumulative preferred stock (without par value) [illegible] the prior annual report.

[illegible] Parents and Subsidiaries of Registrant

[illegible] are no parents of registrant, Armstrong Cork Company.

[illegible] below are the subsidiaries of the registrant, all of which are 100% owned [illegible] and are included in the consolidated financial statements of the registrant:

Domestic subsidiaries:
- Armstrong-Cape Girardeau, Inc.
- Armstrong Contracting and Supply Corporation
- Armstrong Cork Inter-Americas, Inc.
- Armstrong Finance Company
- Caldwell Furniture Company (1)
- Cork Leasing Company
- E & B Carpet Mills, Inc.
- Empire Carpet Corporation
- Fayette Enterprises, Inc. (1)
- Founders Furniture, Inc. (1)
- National Cork Company
- [illegible] Chair Company (1)
- Thomasville Furniture Industries, Inc.

Foreign subsidiaries:
- Armstrong Contracting Canada Limited (2)
- Armstrong Cork (Australia) Pty. Limited
- Armstrong Cork Canada Limited
- Armstrong Cork Company Limited
- Armstrong Cork International G.m.b.H.
- Armstrong Cork (Ireland) Limited (3)
- Armstrong do Brasil Materiais Para Industria e Construcao Ltda.
- [illegible]-Linden-, Deckem-, Wand-Verlege, G.m.b.H. (4)
- Brintons Carpets Limited (5)
- Mahall, G.m.b.H. (4)
- Manufacturas de Corcho Armstrong, S. A.

(1) Subsidiary of Thomasville Furniture Industries, Inc.
(2) Subsidiary of Armstrong Contracting and Supply Corporation
(3) Subsidiary of Armstrong Cork Company Limited
(4) Subsidiary of Armstrong Cork International G.m.b.H.
(5) Subsidiary of Armstrong Cork Canada Limited

[illegible] Financial Statements

The financial statements filed as a part of this annual report are listed in the "Index to Financial Statements and Schedules."

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this annual report to be signed on its behalf by the undersigned thereunto duly authorized.

Armstrong Cork Company
(Registrant)

Date 4-12-62

By Albert H. Sheaffer
Albert H. Sheaffer, Secretary

EXHIBIT 2

PEAT, MARWICK, MITCHELL & CO.
CERTIFIED PUBLIC ACCOUNTANTS

ACCOUNTANTS' REPORT

To the Board of Directors and Stockholders
Armstrong Cork Company:

We have examined the consolidated financial statements and related schedules of Armstrong Cork Company and subsidiaries as listed in the accompanying index. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, such financial statements present fairly the consolidated financial position of Armstrong Cork Company and subsidiaries at December 31, 1968 and the results of their operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year; and the supporting schedules, in our opinion, present fairly the information set forth therein.

Peat, Marwick, Mitchell & Co.

PEAT, MARWICK, MITCHELL & CO.

Philadelphia, Pa.
February 11, 1969

EXHIBIT 2

ARMSTRONG CORK COMPANY AND SUBSIDIARIES

Index to Financial Statements and Schedules

Financial statements:
Consolidated balance sheet, December 31, 1968
Statement of consolidated earnings, year ended December 31, 1968
Notes to financial statements, December 31, 1968

The financial statements of the registrant are omitted as it is primarily an operating company and all subsidiaries included in the consolidated financial statements are totally-held except for certain subsidiaries which have direct (not guaranteed by the registrant) long-term debt which is not considered significant.

Schedules omitted:
V - Property, plant and equipment
VI - Reserves for depreciation and amortization of property, plant and equipment
VII - Intangible assets
VIII - Reserves for amortization of intangible assets
IX - Bonds, mortgages and similar debt
X - Interest

All other schedules are omitted as the required information is inapplicable or the information is presented in the financial statements or related notes.

EXHIBIT 2

ARMSTRONG CORK COMPANY AND SUBSIDIARIES

Consolidated Balance Sheet

December 31, 1940

Assets

		(000)
Current assets:		
Cash		$ 10,005
U. S. Treasury and other securities, at cost which approximates market		328
Accounts and notes receivable:		
Customers' accounts receivable	$ 66,227	
Customers' notes receivable	497	
Miscellaneous	4,322	
	71,046	
Less provision for discounts and losses (Schedule IX)	2,004	69,042
Inventories (note 2):		
Finished stock	56,776	
Goods in process	15,665	
Raw materials	27,285	
Supplies	1,043	100,279
Prepaid expenses		3,557
Total current assets		183,210
Sundry assets and investments, at cost or less	9,344	
Less reserve	351	8,993
Property, plant and equipment, at cost (Schedule V) (note 3):		
Land	16,812	
Buildings	113,974	
Machinery and equipment	236,243	
Construction in progress	32,164	
	399,193	
Less provision for depreciation and amortization (Schedule VI)	150,355	248,838
Paid-up licenses, at cost (Schedule VII)	503	
Less provision for amortization (Schedule VIII) (note 3)	105	398
		$ 439,439

See accompanying notes to financial statements.

Current liabilities:
Notes payable
Current instal.
Accounts payable:
Trade
Other
Accrued expenses:
Salaries, w.
withholdi.
Social secu.
State insur.
Insurance, e.
Federal and s.
Long-term debt (
Deferred income
Deferred incom.

Stockholders' equity:
Preferred stock
100,000 shs.
Common stock
1,400,000 s.
convertible
Common stock,
2,000,000
Capital s.
Retained e.
Less treasury
Preferred s.
Common sto.

EXHIBIT 2

Liabilities and Stockholders' Equity

(000)			(000)	
		Current liabilities:		
$ 12,108		Notes payable		$ 20,934
225		Current installments on long-term debt (note 4) (Schedule IX)		709
		Accounts payable:		
		Trade	$ 23,095	
68,227		Other	1,297	24,392
497		Accrued expenses, withholding and other taxes:		
1,852		Salaries, wages and commissions and related withholding taxes	12,447	
72,316		Social security taxes	601	
		State income, capital stock and other taxes	2,524	
3,320	83,010	Insurance, royalties and miscellaneous	1,998	17,769
		Federal and foreign income taxes		8,407
56,778		Total current liabilities		72,235
15,585				
10,093				
4,349	100,278	Long-term debt (note 4) (Schedule IX)		7,330
	3,667	Deferred income taxes (note 5)		13,696
	180,010	Deferred investment credit (note 6)		1,836
2,311				
84	2,395	Stockholders' equity:		
		Preferred stock, $3.75 cumulative, no par value. Authorized 161,600 shares; issued 161,600 shares (note 7)	16,500	
16,972		Voting preferred stock, no par value. Authorized 1,000,000 shares; issued 100,000 shares, $0.375 cumulative		
111,924		series (at $50 stated value) (note 7)	5,000	
434,140		Common stock, $1 par value per share. Authorized		
36,164		50,000,000 shares; issued 36,000,540 shares (notes 6 and 8)	18,701	38,207
409,192				
		Capital surplus (note 8)		60,483
182,305	210,628	Retained earnings		250,722
				346,889
648		Less treasury stock, at cost:		
124	434	Preferred stock - 43,340 shares	3,864	
		Common stock - 7,001 shares	213	4,077
		Total stockholders' equity		342,812
	$ 485,585			$ 436,108

EXHIBIT 2

ARMSTRONG CORK COMPANY AND SUBSIDIARIES

Statement of Consolidated Earnings

Year ended December 31, 1958

		(000)
Income:		
Net sales		$ 570,421
Other income:		
Interest on marketable securities	$ 299	
Miscellaneous	3,104	3,403
		573,824
Cost and expenses:		
Cost of goods sold exclusive of depreciation and amortization (note 2)		378,752
Selling and administrative		80,018
Depreciation and amortization (note 3)		29,819
Provision for doubtful accounts, less recoveries		849
Other charges		2,243
		491,683
Earnings before income taxes		82,141
Federal and foreign income taxes (notes 5 and 8):		
Current:		
Federal	32,444	
Foreign	1,198	
Deferred	1,481	
Amortization of prior years' investment credits	(924)	34,199
Net earnings		$ 47,942
Earnings per share of common stock (based on average shares outstanding)		$ 2.70

Retained Earnings

Amount at beginning of year		$ 313,006
Net earnings for the year		47,942
Adjustment to conform accounting period of Thomasville Furniture Industries, Inc.		200
		361,148
Deduct dividends:		
Preferred stock - $3.75 per share	$ 660	
Voting preferred stock - $1.87½ per share	187	
Common stock - $1.45 per share	12,805	
Common stock of pooled company prior to combination	1,000	14,652
		$ 346,496

See accompanying notes to financial statements.

EXHIBIT 2

Notes to Financial Statements

December 31, 1968

(1) Principles of Consolidation and Income

The consolidated financial statements include the accounts of the Company and its domestic and foreign subsidiaries. The Company's consolidated foreign subsidiaries at December 31, 1968, had current assets of $20,241,000, plant and other assets of $26,155,000, current liabilities of $13,600,000, and long-term debt of $3,273,000. The earnings of such subsidiaries for the year were $1,273,000.

In accordance with a Joint Plan and Agreement of Merger, Thomasville Furniture Industries, Inc., was merged with and into Armstrong Cork Company as of November 1, 1968. In connection with the merger each share of Thomasville common stock was converted into seven-tenths of a share of Armstrong common stock for a total of 1,309,040 shares, and the convertible voting preferred of Thomasville was converted on a share-for-share basis into 82,875 convertible voting preferred stock of Armstrong (a total of 100,000 shares).

The merger has been treated as a pooling of interests for accounting purposes, and accordingly, the accompanying consolidated financial statements include Thomasville Furniture Industries, Inc., and its subsidiaries for the entire calendar year 1968. Retained earnings as previously reported at December 31, 1967, have been increased by $32,401,000 to reflect the inclusion of Thomasville's

The equity of the Company's equity in the net assets of its subsidiaries over its investment in the subsidiaries amounted to $16,643,000 at December 31, 1968 and has been included in consolidated retained earnings.

Foreign currencies have been expressed in U. S. dollars as follows: property, plant and equipment at approximate U. S. dollar equivalent of cost at dates of acquisition; all other asset and liability accounts at current exchange rates; income accounts at average exchange rates for the year, except for depreciation and charges which have been based on the U. S. dollar cost of the related assets.

(2) Inventories

Inventories are valued at the lower of cost or market. Cost is determined under the "first-in, first-out" (fifo) method except for inventories amounting to $[illegible] at December 31, 1968 valued under the "last-in, first-out" (lifo) method, which amount is below current replacement cost. The following inventory amounts were used in the computation of cost of goods sold in the statement of consolidated earnings:

December 31, 1968	$ 83,134,000
December 31, 1967	100,872,000

(3) Property, Depreciation, Etc.

The Company generally uses straight-line depreciation for financial reporting purposes at rates calculated to provide for the retirement of property, plant and equipment at the end of their useful lives. Estimated useful lives of individual units of property are revised from time to time by Company engineers. Special obsolescence, representing the excess of cost over accumulated depreciation on individual items of property retired or replaced, is charged to operations as additional depreciation in the year the obsolescence is sustained.

(Continued)

EXHIBIT 2

ARMSTRONG CORK COMPANY AND SUBSIDIARIES

Notes to Financial Statements, Continued

(3) Depreciation, Amortization, Etc.

The approximate average effective rates of depreciation for the year ended December 31, 1969, are as follows:

	%
Domestic companies:	
Buildings	2.8
Machinery	7.0
Office furniture and fixtures	10.4
Delivery equipment	28.8
Loose equipment and tools	18.2
Molds, stencils and blocks	40.0
Foreign companies:	
Buildings	3.1
Machinery and equipment	7.7

Upon retirement or other disposition, the accounts are relieved of the asset cost and the related accumulated depreciation. Resulting gains and losses are reflected in earnings.

Maintenance and repairs are charged to expense at the time the expenditure is incurred.

The cost of paid-up licenses is amortized over the remaining lives of the licenses.

(4) Long-term Debt

Long-term debt, including installments due currently, as at December 31, 1969:

	Current (000)	Non-current (000)
Bank loans of foreign subsidiaries due 1971-1975 with interest rates ranging from 5.4% to 6%	$ -	$ -
Mortgages and capitalized lease obligations secured by land and buildings with net book value totaling approximately $7,700,000 due serially to 1991 with interest rates ranging from 5-1/2% to 6%	461	4,939
Other	248	301
	$ 709	$ 5,240

(5) Deferred Income Taxes

For income tax purposes the Company generally uses accelerated depreciation as permitted by the Internal Revenue Service. Provision ($1,000,000 in 1969) has been made in the accounts for future income taxes applicable to depreciation and other minor items reported differently for tax and financial reporting purposes.

(Continued)

EXHIBIT 2

[illegible] COAL COMPANY AND SUBSIDIARIES

Notes to Financial Statements, Continued

(C) Investment Credit

The Investment credit for 1960 amounting to $1,384,000 has been taken directly into income as a reduction of provision for income taxes. Credits for 1960 and prior years, which were deferred, are being amortized over the lives of the related assets.

(D) Preferred Stock

The shares of $7.75 cumulative preferred stock are redeemable in whole or in part at the Company's option at $108.75, plus accrued dividends. The shares are stated in the balance sheet at the redemption price and have an involuntary liquidation value of $100.00, plus accrued dividends.

The voting preferred stock is convertible into common stock at the rate of 1.25 shares of common stock for each share of voting preferred and is callable after April 1, 1970, at an initial redemption price of $52.50 a share [illegible] 31, 1960, there were 100,000 shares of common stock reserved for the conversion of this stock.

(E) Capital Surplus

Changes in capital surplus for the year 1960 are as follows:

	(000)
Amount at beginning of year as previously reported	$ 48,012
Adjustments resulting from pooling of interests with Thomasville Furniture Industries, Inc.	1,133
Amount at beginning of year as restated	50,805
Excess of proceeds over par value of 24,910 previously unissued shares of common stock sold to employees upon exercise of options (including 9,420 shares applicable to Thomasville prior to merger)	724
	50,829
Deduct cost of 22,708 shares of treasury common stock in excess of face amount of debentures converted and of proceeds from exercise of options	446
Amount at end of year	$ 50,483

(F) Stock Options

Under the option plan approved by stockholders in 1952 there were options outstanding for 31,175 shares of common stock at the beginning of the year and 27,810 shares at the end of the year. During the year, options for 28,367 shares were exercised. There were 4,640 shares at the beginning and end of the year available for the granting of options under the plan. The option prices are not less than 95% of the closing market price of the shares on the dates the options were granted. These options are exercisable on a cumulative basis and expire ten years from date of grant.

(Continued)

EXHIBIT 2

ARMSTRONG CORK COMPANY AND SUBSIDIARIES

Notes to Financial Statements, Continued

[illegible] Stock Options, [illegible]

Under the option plan approved by stockholders in 1944 there were options outstanding for 59,340 shares of common stock at the beginning of the year and 59,173 shares at the end of the year. During the year, options for 500 shares were exercised, and options for 234 shares were canceled and thus became available for future granting. There were 90,080 shares at the beginning of the year and 90,294 shares at the end of the year available for the granting of options under the plan. The option prices are not less than the closing market price of the shares on the dates the options were granted. These options are exercisable on a cumulative basis and expire five years from date of grant.

In addition, there were options outstanding for 15,930 shares of common stock at the end of the year and options for [illegible],002 shares were exercised during the year in connection with options originally granted by pooled companies prior to combination. The option prices are not less than the closing market price of the shares on the dates the options were granted. These options are exercisable on a cumulative basis and expire five years from date of grant.

Options were outstanding at the end of the year and options became exercisable or were exercised during the year as follows:

	Range per share	Total for 158,935 shares
Options outstanding at the end of the year (granted 1949 to 1958):		
Option price (average $43.61 per share)	$ 17.80 to 62.00	$ 6,779,000
Market value at dates options were granted	$ 18.31 to 62.00	6,815,000
Options to become exercisable during the year:		
	Range per share	Total for 13,430 shares
Option price	$ 14.97 to 62.00	$ 831,000
Market value at dates options became exercisable	$ 60.75 to 64.13	1,438,000
Options exercised during the year:		
	Range per share	Total for 34,674 shares
Option price	$ 18.75 to 62.00	$ 738,000
Market value on dates of exercise	$ 61.88 to 64.25	[illegible]

No values are assigned in the accounts to options and accordingly no changes are reflected in earnings.

None of the capital stock is reserved for officers and employees or for options, warrants, conversions, or other rights, except as stated above

ACCURONIC CORP. COMPANY AND SUBSIDIARIES

Notes to Financial Statements, Continued

(J) Pension Plans

The Company and certain of its subsidiaries have pension plans covering substantially all employees. The pension cost charged to operations for the year 19[illegible] was $1,474,000. This included current service cost and, as to certain of the plans, amortization of prior service cost over periods ranging up to 30 years. The Company's policy is to fund these pension costs currently.

(K) Subsequent Events

At the annual meeting on April 20, 19[illegible] the stockholders will be asked to approve an increase in authorized common stock from 30,000,000 to 60,000,000 shares and a proposed 2-for-1 split of outstanding common shares.

In January, 19[illegible], the Company entered into an agreement in principle to sell the packaging materials machinery and related assets. If the sale is consummated, the aggregate consideration (consisting of cash and instalment notes) will be substantially in excess of the carrying value of the assets.

(L) Pro Forma Earnings per Share

Assuming conversion of $4,375 convertible preferred stock and exercise of all stock options, earnings per share would be reduced by $.20.

(M) Supplementary Profit and Loss Information

	Charged directly to profit and loss		
	Cost of sales sold (000)	Other (000)	Total (000)
Maintenance and repairs (except as to office equipment and automobiles, the amounts of which are not significant)	$ 17,478	1,812	19,290
Depreciation, depletion and amortization:			
Depreciation of property, plant and equipment	$ -	20,740	20,740
Depletion of timberlands	-	111	
Amortization of intangible assets	-		
	$ -		
Taxes, other than Federal and foreign income taxes (see note)	$ 10,700	5,569	16,277
Rents	851	2,472	3,403
Royalties	[illegible]	[illegible]	[illegible]

Note: Included in taxes are the following:

	(000)
Capital stock	$ 9,109
State capital stock and franchise	
State income	
Real and personal property and miscellaneous	6,982
	$ 16,277

EXHIBIT 2

Schedule X

ARMSTRONG CORK COMPANY AND SUBSIDIARIES

Property, Plant and Equipment

Year ended December 31, 1968

	Balance at beginning of year (000)	Additions at cost (000)	Retirements or sales (000)	Other changes - Debit (000)	Other changes - Credit (000)	Balance at end of year (000)
Land	11,199	563	91	-	311(b) 33(c)	16,912
Buildings	106,919	6,200	1,168	162(d)	317(c)	111,074
Machinery and equipment	229,659	29,380	15,314	448(d) 99(c)	-	256,860
Construction in progress	17,713	8,631	-	-	44	26,161
	365,490	44,727	16,573	609	804	409,193

(a) Restated to include balances of pooled company totalling $20,891,000 (see note 1 to financial statements).
(b) Depletion credited to asset account.
(c) Transfers - other accounts.
(d) Adjustments resulting from examinations of prior years' tax returns by Internal Revenue Service.

EXHIBIT 2

Schedule IX

ARMSTRONG CORK COMPANY AND SUBSIDIARIES

Provision for Depreciation and Amortization
of Property, Plant and Equipment

Year ended December 31, 1960

	Balance at beginning of year(a) (000)	Additions charged to expense (000)	Retirements or renewals and replacements (000)	Other changes Debits (000)	Other changes Credits (000)	Balance at end of year (000)
Buildings	$ 38,235	1,050	952	-	14(b) 21(c)	40,118
Machinery and equipment	115,868	20,690	14,651	110(b)	254(c)	122,044
	$ 154,103	21,740	15,603	110	275	162,365

(a) Restated to include balances of pooled company totalling $11,501,000 (see note 1 to financial statement).

(b) Adjustments resulting from examinations of prior years' tax returns by Internal Revenue Service.

(c) Adjustment to conform accounting period of Thomasville Furniture Industries, Inc.

EXHIBIT 2

ARMSTRONG CORK COMPANY AND SUBSIDIARIES — Schedule VII

Intangible Assets

Year ended December 31, 1968

	Balance at beginning of year (000)	Additions at cost (000)	Deductions (000)	Balance at end of year (000)
Paid-up Licenses	$ 505	87	6(a)	586

Schedule VIII

Provision for Amortization of Intangible Assets

Year ended December 31, 1968

	Balance at beginning of year (000)	Additions charged to earnings (000)	Deductions (000)	Balance at end of year (000)
Paid-up Licenses	$ 92	68	6(a)	154

(a) Fully amortized licenses charged against accumulated amortization.

EXHIBIT 2

ARMSTRONG CORK COMPANY AND SUBSIDIARIES

Bonds, Mortgages and Similar Debt (a)

December 31, 1969

Name of issuer and title of issue	Amount authorized by indenture (000)	Amount issued and outstanding (000)	Amount included in preceding column which is held by or for account of issuer (000)	Amount included in preceding column which is held by or for account of foreign subsidiaries (000)
Armstrong Cork Company:				
Capitalized lease obligation due July 1975 with interest computed at 6-1/2%	$ 2,110	1,424	None	2,424
E & B Carpet Mills, Inc.:				
6% note due July 1970	200	50	None	50
6-1/2% mortgage note due January 1988	165	165	None	165
6-1/4% mortgage note due August 1993	1,000	470	None	470
5-1/2% mortgage note due January 1980	208	190	None	190
6-3/4% mortgage note due July 1976	140	126	None	126
6-1/2% mortgage note due April 1985	330	300	None	300
6% mortgage note due April 1991	180	164	None	164
Thomasville Furniture Industries, Inc.:				
6% note due January 1970	25	13	None	13
5-1/2% note due December 1979	502	197	None	197
6% notes due 1980 to 1976	940	851	None	851
5-1/2% note due 1970	182	65	None	65
Armstrong Cork Company Limited:				
6% note due 1972	1,705	1,190	None	1,190
6% mortgage note due 1991	333	324	None	324
6% mortgage note due 1983	695	496	None	496
Armstrong Cork International S.A.R.L.:				
5-3/4% note due December 1978	1,600	1,600	None	1,600
Brinton Carpets Limited:				
6% mortgage note due September 1971	1,000	881	None	881
Mallalieu U.K.L.:				
6-3/4% mortgage note due 1991	50	38	None	38
	$ 10,698	8,039		8,039

(a) See note 4 to financial statements.

(b) Instalments due within one year, $708,400, are carried as a current liability.

EXHIBIT 2

Schedule 7B

Amount Issued and now held by or for account of Issuer thereof (000)	Amount Issued and now held by or for account of Issuer thereof (000)	Amount included in preceding column which is Not held by or for account of Issuer thereof (000)	Amount Included in related Balance Sheet (000)	Amount in sinking and other special funds of Issuer thereof	Amount pledged by Issuer thereof
	1,424	None	1,424	None	None
200	80	None	80	None	None
185	185	None	185	None	None
1,000	989	None	989	None	None
200	190	None	190	None	None
140	126	None	126	None	None
850	836	None	836	None	None
190	184	None	184	None	None
25	13	None	13	None	None
202	187	None	187	None	None
326	251	None	251	None	None
166	85	None	85	None	None
1,298	1,190	None	1,190	None	None
383	364	None	364	None	None
504	496	None	496	None	None
1,500	1,500	None	1,500	None	None
1,000	881	None	881	None	None
[illegible]	38	None	38	None	None
30,836	8,039		8,039	8,039(b)	

EXHIBIT 2

Schedule VIII

[illegible] CORPORATION AND SUBSIDIARIES

Reserves

For the year ended December 31, 1968

	Balance at beginning of year (000)	Additions charged to [illegible] (000)	Deductions (000)	Balance at end of year (000)
Provision for discounts and losses	$ 3,057	17,974	17,727(b)	3,304

(a) Deemed to include balances of the pooled company totalling $100,000 (see note 1 to financial statements).

(b) Discounts granted and uncollectible receivables, less recoveries.

END

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

3-X-61

EXHIBIT 60

THE NEW-YORK TIMES, SATURDAY, NOVEMBER 2, 1963

New York Stock Exchange Transactions

FRIDAY, NOV. 1, 1963

1963 High	1963 Low	Stocks and Div. In Dollars	Sales 100s	First	High	Low	Last	Net Chg.
47¾	32	Acf Ind 2.50	6	45	45	45	45	-1
119¾	100¼	Akzo Chem	45	119¼	119¼	119¼	119¼	
24⅝	20⅛	Akzo Ch pf	40	24	24	24	24	
56	38	Akzo Chem	68	41⅝	41¾	41⅝	41⅝	
67⅞	48⅝	Allchem 3.60	11	54½	54	53½	53½	
27	20	Allegh Lud 1	275	24¼	25¼	24¼	24¼	
40⅛	33½	Allens 05 .20	14	34½	35	34½	34½	
52⅞	43⅝	Allied Str 3	1433	46½	46¾	45¾	45¾	
57⅛	52¼	Armour 4.50	10	53½	53	53	53½	
81	55¾	Amr Ck 1.40	567	77½	78½	77½	78½	
104	87½	Amr Ck pf 3.75	100	94½	94½	94½	94½	
58	48⅝	Am Bus 3.60	11	56½	56½	56	56	
32⅝	26¼	Am Can 1.80	12	28¾	29¼	28¾	29	
47⅞	37⅜	Amer Ind 1	22	43	43	43	43	
51⅝	34⅜	Amer Oil 1.20	141	43⅝	43¾	43¼	43¼	
104⅛	82	Am Oil pf 5	2	94	94	94	94	
40½	31	Am Sm 1.60	2	35¾	35¾	35¾	35¾	
33⅝	25¼	Amstar 1.20	5	29¾	29¾	29¾	29¾	
33⅝	24	Anaconda 1.50	345	28⅝	29⅛	28⅝	29	
44⅞	33⅝	Andrea 1.40	47	41½	42¼	41½	42	
46	33⅝	Anheuser 1.60	52	41⅝	41⅝	41⅝	41⅝	
41	33⅝	Archer 1.20	14	37⅛	37⅛	37⅛	37⅛	
119	87	Ark Nat G 1.40	418	103	103	101	101	-2

August 12, 1956

Messrs.
M.J. Warnock, President
J. H. Binns, Sr. Vice Pres.
Fred Donnelly, Treasurer
Armstrong Cork Co.
Lancaster, Penna.

PERSONAL AND CONFIDENTIAL

Gentlemen:

I want to thank you all for the courtesies extended to me during my visit to your office, and also for the luncheon.

I am enclosing herewith a suggested memorandum of agreement to be entered into between us which I believe carries out the ideas discussed at that time.

In Paragraph 9 of the Agreement, I have left out the number of days within which you are to reply to any submission. I will leave that entirely to your discretion, and would appreciate it if you will fill in the blank.

Further, I will also leave to your discretion either to add, or delete any sentences, thoughts, or ideas incorporated in this Agreement with respect to our understanding. I tried to be as brief as possible for I feel the intent of the persons involved are far more important than the written words.

I would appreciate hearing from you at your convenience. As soon as I do, I will start submitting companies. Since I left you, I have marked down about 40 companies which I believe would fit into the categories we discussed, and will submit them in the order of their importance to you and their ready availability.

I believe that this project in which we are about to enter is pregnant with possibilities, and I am sure that something constructive and profitable will be the result.

I enjoyed my day with you gentlemen, and hope that it will result in a long, pleasant and happy relationship, and profitable to myself, the Armstrong Cork Company, and its stockholders.

Very truly yours,

Harry S. Samuels

HSS:nd

PLAINTIFF

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

[illegible]

[illegible]

[illegible]

Dear Mr. [illegible]

[illegible] [illegible] [illegible] [

4. Should you submit a deal which is already in our files and/or has been suggested to us by other brokers, we will so advise you immediately, and you will then refrain from working on such a deal on our behalf fully, and we will not be liable to you if, as, and when a deal is consummated by us with such a company.

5. If the company is brought to us by another broker, or brokers, and is in our files, or if a company which we suggest to you which we would like to have you explore, and we instruct you to proceed, explore and work on same, in that event we will pay you two-thirds (2/3) of the commission as set forth in the next paragraph, or we will pay you full commission as set forth in the following paragraph where another broker brought a deal, and you will be responsible for paying the broker from whence the deal originated, whatever you agree with him, or if such originating broker makes a claim against us which entitles him to a fee.

6. We will agree to pay you on the closing of any company which you may have found for us as finder, broker, or negotiator, a fee amounting to three (3) per cent of the total amount which we will pay or lend.

7. We reserve the option to arrange for the seller to pay you at the closing on the same terms as set forth in Paragraph 6.

8. If a deal is found by us, or suggested by you, and we instruct you to proceed and negotiate, or you negotiate on a deal at our suggestion, and then we

Harry S. Carter [-3-]

[illegible] the [illegible], and [illegible] not to proceed thereon, then, in that event, if within twenty four (24) months from that date, if we should purchase, or acquire that property, with or without your assistance, then, in that event, we agree to pay you the same sum as set forth in [illegible].

9. We agree to advise you within a reasonable time not to exceed [illegible] days, of our interest in any property you may have suggested to us.

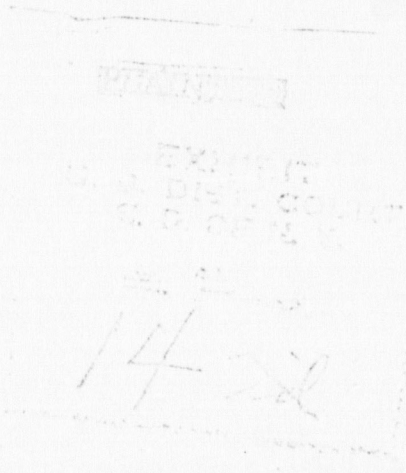
10. If you do not hear from us within the designated period as aforesaid in the preceding paragraph, then you can proceed as though you have been given authorization.

Very truly yours,

EXHIBIT 11A

October 10, 1935

EXHIBIT 13



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January 11, 1967

Mr. Perry S. Nemelka
320 Buchanan Turnpike
Provo, Utah

Dear Barry:

It was good to talk with you on Sunday and to know that you share our feelings with [illegible] our letter of agreement dated August 22, 1966. [illegible] we would have [illegible] over the trouble had we followed your suggestion in this regard, in any event we [illegible] this agreement is not required, and you may, therefore, consider his letter [illegible] notice of termination as outlined in Paragraph 10 of the agreement.

We also appreciate your offer to help us with the Price negotiations if our interest [illegible] in that field. It is entirely possible that we may call on you in this respect, but it will be several weeks at least before we will know how probable it is [illegible] this deal today.

In the event you understand the termination of our written agreement with you is [illegible] means an end to [illegible] decline on our part to carry out [illegible] attitude. It simply means that to us it now seems [illegible] more sense for us to work out our [illegible] individual [illegible] you bring us. This, of course, [illegible] you will [illegible] information to us until you are [illegible] on full [illegible], nor will we be responsible for any [illegible] expenses of any kind prior to our having reached an understanding on the [illegible] matter at hand.

I hope you have a cool trip and that prior to your return we will have concluded the [illegible] deal and have [illegible] in the mail. Thanks again for your aid and for your interest.

Sincerely,

F. C. Donnelly, [illegible]

ccm

J. M. Dunn, President's Office
Max Berglof, Staff Services
M. A. Jensen, Plant and Property Procedures Coordinator
A. M. Shaffer, Secretary's Office

PLAINTIFF'S
EXHIBIT
U. S. DIST. COURT
S. D. N. Y.

180

January 4, 1967

Mr. Harry S. Samuels
120 Rockaway Turnpike
Lawrence, New York

Dear Harry:

This will confirm several of our earlier conversations and specifically our telephone conversation today regarding the Thomas Pride Mills, Inc.

As you know, under our letter of understanding dated [illegible] 45, 1966, we have no [illegible] or other commercial responsibility in the case of possible acquisitions submitted to us which we were previously familiar with and considered on an earlier date. Again, in order to avoid any possible misunderstanding, we have for some time been wary of the Thomas Pride Mills' interest in merging, consolidating, or offering it self for acquisition. In our crude contacts, wholly apart from our discussions with you and prior to the receipt of written information from you, we were informed about these interests on the part of Pride Mills. It is our present intention to discuss with Pride the possibility of acquiring the firm. In order that both our records can be clear on this point, it should be understood that should our discussions with Pride result in a deal of any sort between our two companies, we would ask you to [illegible] in this connection.

With regard to the [illegible] matter, I will be expecting a call from you later this week. I feel quite sure that in spite of our differences in interpreting the letter of agreement, a mutually satisfactory solution can be found.

Sincerely,

T. S. Donnelly, Jr.

SSD

J. M. Binns
E. L. Bixner, Legal Department
H. A. Jennen, Floor and Consumer Products Operations

EXHIBIT 15

PLAINTIFF

RECEIVED
U. S. DIST. COURT
S. D. OF N. Y.

16 2 M

1:30 p.m.
TM-Y

July 5, 195

Gentlemen:

Mr. W. H. Mirth, Pres.
Mr. H. D. Dornick, Jr., V.P.
Mr. Ind Dranesby, Pres.
c/o Dranesby Mfg. Co.
Lancaster, Pa.

Mr. Jos M. Finch, Pres.
c/o Thornville Furniture Ind., Inc.
Thornville, Ill.

Gentlemen:

I am very pleased to [illegible] that I will [illegible]
into your [illegible] contract a provision [illegible]
[illegible] Furniture Manufacturers Association, Inc., [illegible] to the
resolution of [illegible] Furniture Manufacturers Association, Inc. [illegible].

I am enclosing for your [illegible]:

1. Your [illegible] to be published in the [illegible] dated [illegible].

2. Your [illegible] with respect to the [illegible] that I am entitled to [illegible] closing the deal.

I would appreciate hearing from you as to whether the matter of my commissions was taken care of in the contract.

Most Sincerely,

Harry C. Arnold

HCA:LK

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RECEIVED
NOV 1 1 1992

EXHIBIT 16

PLAINTIFF'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
18

March 18, 1960

Honorable Arthur J. Goldberg
Paul Weiss, Wharton, Rifkind & Garrison
375 Madison Avenue
New York, N.Y.

Dear Judge:

I know I am late in sending you this information, but I have been unusually busy, and I note that you have been traveling all over the world so that until we hear from you, I hope this letter will find you and all your loved ones in good health.

I am enclosing herewith a set of correspondence that I had in the Spartanburg Conference and also a report and brief history of my dealings with them. When you have more time in the near future, I would like to confer with you and discuss the cases and the terms on which you will handle the case if, as and when you choose to take it. Whichever way you will.

Very Sincerely,

Harry B. Sharpe, Jr.

HBSrbC
ENCLs Set of correspondence
Statement

EXHIBIT 18

EXHIBIT E

company and its location and I am sure that by the end of the conversation, Mr. Finch knew it was Armstrong (I made sure he did) and he readily acceded to an appointment. I told him that either I or one of the officers of the interested corporation would talk to him. After that I was told by Fred Donnelley that he telephoned him and set up an appointment to meet him and they met at a bank in Charlotte, North Carolina and they told me that nothing was happening. At the furniture show in Chicago, I went in to see Tom Finch at the Thomasville showroom at the Furniture Mart. With us was a mutual friend and neighbor of Thomasville, Collier Black, who is associated with the Virginia Furniture Company, I believe. I said to Mr. Finch "how are you getting along with the Armstrong Cork people?" (this was January 10th, 1958) and he said that he would rather not tell and that if I had any companies that he could buy, I should not come to him. I told him that I was working on this deal for Armstrong Cork and that I could not submit any deals to him until their reorganization was at an end. Finch said he was not interested in any deal with Armstrong Cork. I am sure that Collier Black heard that since he was standing right alongside of us and I am sure he will testify to our behalf. I saw again Mr. Finch at the summer Furniture Show in 1957 and at that time he also said nothing until I was in the process a few months later that they were merging. The merger involved around one hundred and forty million dollars worth of stock of Armstrong. Before this merger took place, I had closed a small deal with them and a letter attached on November 1958 indicates that I met with Donnelley and E. V. Potter on November 25th in the Armstrong's New York office. They say the only meeting that I attended and the only work that I had in connection with that company was to introduce him into the deal. I remember that Mr. Donnelley was disturbed by the fact that I claimed the full commission as set forth in the Agreement of August 15th, 1958. He wanted to make a flat rate with me and I refused. The early part of 1958 he sent me a check for $9,000 telling me on the telephone that the deal involved $300,000 and at 3% that was my commission. Naturally, wanting to stay in their good

PLAINTIFF'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

-507-

To T. A. Black

Date 9-10-46 Time 1:45 A.M. P.M.

WHILE YOU WERE OUT

M. by Dan

Telephone No. FA 7-0588

☐ Telephoned ☐ Please Call Him

☐ Called To See You ☐ Will Call Again

Remarks Cpl 302 New York

Will call again - 2:15 p.m.

Will call about date of Medical for application

EXHIBIT 50

PLAINTIFF'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

PLAINTIFF
EXHIBIT
U. S. DIST. COURT
S. D. OF N.Y.
22-A

82

FIRST NATIONAL CITY BANK

399 PARK AVENUE, NEW YORK, N.Y. 10022

July 20, 1966

Mr. F. G. Armstrong, Jr.
Treasurer
Armstrong Cork Company
Lancaster, Pennsylvania 17604

Dear Fred:

Enclosed is a summary describing a small fourth high quality furniture manufacturer brought to our attention by Smith, Barney & Company. Briefly, this is John Widdicomb Company, Grand Rapids, Michigan. Please let me know if I can provide you with more detailed information. Another company along this line which might be of interest is Hickory Chair Company, Hickory, North Carolina. From the attached write-up you can see a rather strong record of operations over the past five years. While we have no knowledge that the owners will consider a merger with a larger company, I would be happy to ask the question myself if you wish.

I have also had an opportunity to discuss this situation on a no name basis with Harry Samuels, a business broker who has done quite a bit of work in this area during the past few years with our customer Monsanto. I think the enclosed letter might be of some interest to you and I would be happy to arrange for you to meet with him if you think it would be helpful.

With kindest regards,

Sincerely,

H. Eric Schmidt
Vice President

EXHIBIT 12

PX 18

CONFIDENTIAL

FIRST NATIONAL CITY BANK
CORPORATE FINANCIAL PLANNING & MARKETING

Business: Company manufactures high quality bedroom, dining room and living room furniture. Sells to jobbers, furniture and department stores.

Location: Midwest

Financial Data: ('000's)

Cash	
Net Current Assets	
Long Term Debt	
Net Worth	1,471
Sales	2,000+
Net Income	reported profitable

Availability: We are told the owners may be receptive to merger discussions.

Source: Smith Barney, investment brokers.

Fee: Not specified

Other Considerations:

Date 5/2/86

84

July 27, 1966

NOTE FOR THE FILE

Subject: Furniture and Carpet Acquisition Interest
First [illegible] City Bank - [illegible] Erle Schmidt
Dudley Brown - Harry [illegible] Samuels

Following my discussion several weeks ago with Erle Schmidt, he has passed on to us some acquisition information of interest.

First, he suggested we consider the Western Chair Company in Hickory, North Carolina. I have since asked him to approach those people on a no-name basis to see if they have any interest in being acquired by a company like Armstrong. At the same time, he will also find out the percentage of this company's production going into case goods versus upholstered furniture.

Of perhaps more interest is Erle's suggestion that we talk to a Harry Samuels, a business broker. After deciding it was not a deal Bing, we felt we should take a closer look at this possibility. In discussing Samuels more specifically with Erle, I find that he has been a customer of the bank for four or five years and is a man about 50 years of age who came to America as a young man from Eastern Europe. He has a Columbia Law School graduate, but is not practicing law. He is considered to be extremely reputable and reliable by First National people with whom he has had considerable dealing. He has acted as both an investment banker and a principal in putting acquisitions together time in some cases he has put money in a small company prior to selling it. He is reputedly knowledgeable of a specialties in the furniture and carpet area, and is said to have been the largest shareholder at one point. As would be inferred above, he is now a man of considerable independent means.

Erle made it a point to suggest that in any dealings we may have with Mr. Samuels, we would be well advised to clearly establish Mr. Samuels' interest at the outset.

Mr. Schmidt will be calling Mr. Samuels to identify our interest and to tell him to expect a call from me. I am hopeful that Jim Evans and I will be able to arrange an appointment in the near future.

T. G. Donnelly, Jr.

sms

Plaintiff's Exhibit 24 in Evidence

-615-

-616-

NCES	Date Report is Written 2 / 27 / 66	Report No.
CATE: (1) Cash, o. Check No. or ir Travel	CASH SUMMARY	
	1. Balance from Report of / /	
	2. Advances Received. Total from Detail at Left.	23.6
	3. Total of Lines 1 and 2 Above.	23.6
	4. Less Disbursements - Total from Below	23.6
	5. Balance on Hand (3 less 4). Carry Forward to Line 1 of Next Report or If Not a Continuous Traveler, Return Cash.	-0-

CAR or	Long Dist. Tel.	Bus. Enter.	Other Exp.	AS REQUIRED DESCRIBE EXPENDITURES (READ INSTRUCTIONS ON BACK). IF MORE SPACE IS NEEDED, USE FORM 171 AND ATTACH.	TOTAL
SCRIPTION REQUIRED					
		17.15		Lunch-Lancaster Country Club Messrs. M. J. Warnock, F.S. Donnelly and J. H. Binns, of	17.1
				Armstrong, and Larry Samels (Acquisition Specialist) to discuss various acquisition possibilities.	
		12.15		Lunch-Lancaster Country Club Messrs. Max Dannhof and J. H.	12.1
				Binns of Armstrong, and Messrs. Platt and Griswold of Exhibition Services Inter-national, to discuss Armstrong Lancaster County consumer exhibit possibilities.	
To Marietta and return				Personal Car - Marietta Depot and return - 29 miles @ 8¢ mi.	2.3
	2.32	29.30			31.6

PURPOSE OF TRIP(S)

[ ] Visits to Company locations as required and/or expected by Job Specifications

COMPANY AUTO - LICENSE NO.	
SPEEDOMETER READING (END OF WEEK)	
SPEEDOMETER READING (BEGINNING OF WEEK)	
TOTAL MILES	
LESS PERSONAL MILES	

Less Personal Use of Co. Car. Miles @ ¢ Per Mile

Net to be Accounted for - Insert on Line 4 Above

Item Indicated (*) Above to be Charged to:

OPERATION

PROJECT NO.

For Use of Accounting Office — Man No.

CPD	Cat.Sr.	Dept.	Oper.	Class	Am
141	25				
141	37				

AMOUNT & TYPE OF ADVANCE

Date	Amount	INDICATE: (1) Cash (2) Co. Check No. or (3) Air Travel
8/31	31.60	(2)

Report is Written 8 / 27 / 66 — Rept. Pd.

CASH SUMMARY

1. Balance from Report of / /	
2. Advances Received. Total from Detail at Left.	31.60
3. Total of Lines 1 and 2 Above.	31.60
4. Less Disbursements - Total from Below.	31.60
5. Balance on Hand (3 less 4). Carry Forward to Line 1 of Next Report or If Not a Continuous Traveler, Return Cash.	-0-

DATE	HOTEL	MEALS (Incl. Tips)	TRANSPORTATION: A - Air B - Rail	CAR: Rental Charges	Rental Car Other Than Hertz, Avis	Fares (Bus, Taxi, Etc.)	Misc. (Tel., Etc.)	Local Transp. Tel. Calls	COMPANY CAR: Gas	COMPANY CAR: Other	Long Dist. Tel.	Dues, Conv.	Other Exp.	AS REQUIRED DESCRIBE EXPENDITURES (SEE INSTRUCTIONS ON BACK). IF MORE SPACE IS NEEDED, USE FORM 121 AND ATTACH.	TOTAL
														Inwood-Lawrence Country Club Lunch w/ H. J. Kunsch, P.E.	
Lawrence												17.75			17.75
														(negotiation specialist) to discuss various negotiation possibilities.	
														Inwood Telephone Service Co. Reverse Dial Charge on Call to	
												12.15		Mineola	12.15
														Mineola Telephone Co. Long Distance Call to	
														Lawrence	
												20.30		Cash Return - Unused Portion of Cash Advance	20.30

CERTIFICATE OF TRAVEL

I certify that I have read the instructions on regulations governing travel and that this voucher is in accordance therewith.

Signature of Traveler

Approved

Signature of Supervisor

Approved

Signature of Division Head

CO. CAR ADD'L

ENGINE NO.

BODY NO.

SERIAL NO. OF MOTOR

TOTAL MILES

MILES OFFICIAL USE

Less Personal Use of Co. Car: Miles @ ¢ Per Mile

Not to be Accounted for - Insert on Line 4 Above

Per Diem Authorized

Mo. No.

C&D	Mon.	Dept.	Org.

Armstrong
CORK COMPANY

LANCASTER, PA. 17604

F. S. DONNELLY, JR.
Treasurer

August 25, 1966

DEFENDANT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

Mr. Harry S. Samuels
1501 Broadway
New York, New York 10036

Dear Mr. Samuels:

As a result of your recent visit with Messrs. Warnock and Binns and the writer, we are suggesting the following terms under which you will act as a finder, broker or a negotiator for the submission of, or other action with reference to, proposals involving companies for possible acquisition by us.

1. We will not be liable for any disbursements or expenses of any kind or nature made or incurred by you in your search for companies for possible acquisition by us, even though done as a result of a suggestion from us.

2. No fee or other compensation shall be due and payable to you in any situation unless and until the transaction, based upon an acquisition found or negotiated by you, is actually closed or consummated. The stage of negotiations reached at the time of any failure of a deal shall be immaterial so far as a fee is concerned. In other words, no fee will be payable to you when the transaction is not closed, irrespective of whether the failure to close is due to some act or failure to act on our part or on the part of a prospective seller.

3. If and when you submit a proposition to us for consideration, we will, within fourteen (14) days after our receipt of such submission, inform you of our interest, if any, therein and of any further action, such as supplying additional information or negotiating, which we wish to have done with respect thereto.

4. In the event you submit a possible acquisition which has theretofore been considered by us, even though no negotiations with respect thereto had taken place, and irrespective of the source thereof (suppliers, customers, bankers, employees, outside directors, other brokers or any other source), we will advise you promptly of that fact and,

Exhibit A

thereafter, you will refrain from working on our behalf on that deal. In any such case, if at any time we consummate a transaction with reference to a company so involved, we will have no obligation to you for a fee or other compensation or expense reimbursement.

5. In the event we become interested in a possible acquisition suggested by a source other than you, and we instruct you to explore and negotiate the same, we will, upon consummation of such a transaction, pay you two-thirds (2/3) of the fee set forth in the following paragraph 6. If the source of a possible acquisition referred to in the preceding sentence is another broker or finder to whom a fee or commission will or may be payable by us, we may afford you the opportunity of fixing by mutual agreement with such other broker or finder the amount of his fee or commission; and, if agreement is reached, we will pay you the full fee set forth in paragraph 6 hereof and you will be responsible for the payment to him of the fee so fixed, thus discharging any Company liability to him on such account.

6. We will pay you as a fee a sum of money equal to three per cent (3%) of the total consideration paid by us for an acquisition found and negotiated and consummated by you on our behalf. In the event the said consideration shall be capital stock of our Company, the amount thereof for the purpose of computing your fee shall be based upon the closing price thereof on the New York Stock Exchange on the date of closing the transaction. Said fee shall be payable to you within fifteen (15) days after the closing. We reserve the option to arrange for the seller in any such transaction to pay your fee in accordance with this agreement.

7. There may be occasions when we would wish to consult with you in the general area of acquisitions or with reference to a specific acquisition emanating from a source other than you. We should like to feel free to call upon you, with the understanding that your sole compensation in each such case would be fixed by mutual agreement prior to your rendering any such consulting services to us.

8. If we consider a possible acquisition received from a source other than you, and, after instructing you to negotiate the same for us, we instruct you to terminate your activities in connection therewith, we will pay you two-thirds (2/3) of the fee provided in paragraph 6 if we consummate that acquisition within a period of twenty-four (24) months after the date of our said instruction to you to terminate your activities. If

the possible acquisition referred to in the preceding sentence is one originating from you, and the other conditions of that sentence are met, we will pay you the full fee provided in paragraph 6.

9. In our Company's operation under this agreement, we undertake to do no more than consider any submission to the extent merited, in our sole judgment. While we will handle all submissions from you with care and discretion, we cannot agree to hold any submission in confidence or be a party to any confidential relationship.

10. Either of us may terminate this agreement at any time by giving the other at least thirty (30) days' written notice of intent to terminate. It goes without saying that we would not, in bad faith, exercise our right to terminate simply to avoid the payment of a fee to you in accordance with this agreement.

This letter is being addressed to you in duplicate. If acceptable to you, will you please indicate your acceptance by signing and returning one copy to us.

Very truly yours,

ARMSTRONG CORK COMPANY

F. S. Donnelly, Jr.
Treasurer

Accepted:

Harry S. Samuels

Date: 8/25, 1966

SES

Exhibit A

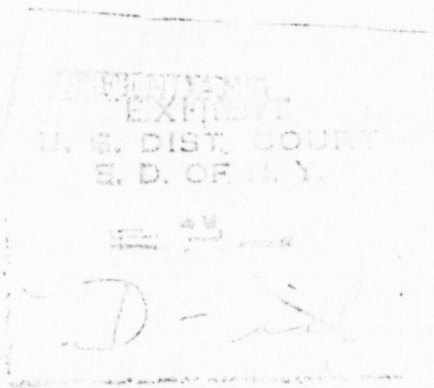
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

91

PENNSYLVANIA
6-8040

HARRY E. SAMUELS

MERGERS, ACQUISITIONS, DIVERSIFICATIONS, FINANCING

EDWARD BERNSOHN
CONSULTING ENGINEER

1501 BROADWAY
NEW YORK, NEW YORK 10036

August 16, 1966

Mr. Fred Donnelly, Treasurer
Armstrong Cork Company
Lancaster, Penna.

PERSONAL AND CONFIDENTIAL

Dear Fred:

You may recall that during our luncheon last week I mentioned to you an irradiated wood company that I have available.

You told me that you had something of that nature submitted to you, therefore, if you should find that this is the same process and the same company, would you return all of the enclosures to me? If not, please look it over, or have one of your experts look it over.

Control of this company is available.

I am looking forward with pleasure to hearing from you with respect to this, and the other matters about which I wrote to you.

Most sincerely,

Harry E. Samuels

P. S. The sample of the irradiated wood is being sent to you under separate cover. A descriptive brochure is enclosed herewith.

EXHIBIT

PENNSYLVANIA
9-0240

HARRY B. SAMUELS
MERGERS, ACQUISITIONS, DIVERSIFICATION, FINANCING

EDWARD BERNSOHN
CONSULTING ENGINEER

1501 BROADWAY
NEW YORK, NEW YORK 10036

NAME OF COMPANY

ISO-NUCLEAR CORPORATION - 160 BROADWAY, NEW YORK, N.Y. 10038
WILLIAM A. LORD, PRESIDENT

PRODUCT:

Wood-plastic combination made by irradiation of wood using cobolt 60 isotopes. A sample of ash wood prepared in this manner is enclosed. This sample is straight from the processing, having only received a light sanding and buffing.

FINANCIAL:

A brochure describing this venture is enclosed, including an analysis of the market technology, and the funds required.

It should be noted that, of the $1,850,000 required, only $570,00 would be put up by the participating investors. $1,280,000 is being provided by the New York State Atomic and Space Development Authority and the Department of Defense.

NOTES:

The principal product of the plant is wood-plastic combination. During the initial stages, however, this plant would also irradiate meats for the Department of Defense.

It is contemplated that, in due time, this latter portion of activity would be dropped, as the wood portion of the plant picks up in business. However, during the initial stages, it is worthwhile to use the plant to produce irradiated meat for the Department of Defense since the production capacity is available.

Another point of interest is that a sample floor was installed in the World's Fair. Millions of people walked over this floor. At the end of the experiment the floor was as good as new. It never required waxing.

EXHIBIT D

HARRY J. SAMUELS
MERGERS, ACQUISITIONS, DIVERSIFICATIONS, FINANCING

EDWARD BERNSOHN
CONSULTING ENGINEER

1291 BROADWAY
NEW YORK, NEW YORK 10036

September 21, 1966

Mr. Fred Donnelly
Armstrong Cork Co.
Liberty Street
Lancaster, Penna.

PERSONAL AND CONFIDENTIAL

Dear Mr. Donnelly:

Mr. Harry Samuels suggested that I write to you about the following possible acquisition for Armstrong Cork.

I shall outline the highlights of the company below:

NAME: Resyn Corporation - Linden, New Jersey - Leo Levitt, Pres.

MANUFACTURERS OF:

Copolymers, polyesters, vinyl acrylic emulsions, epoxies.

70% of the production is sold to paint manufacturers;
30% is sold to the automotive industry.

SALES BREAKDOWN:

$6 million to the paint industry
$2 million - automotive industry
$2 million - epoxies - epoxy resins, floor coverings, road building and adhesives.
$4 million - Epoxy resyn manufactured on a toll arrangement for Union Carbide.

FINANCIAL:

This is a private held company, therefore, the true value is difficult to determine from the financial statement which they furnish for tax purposes. Its true net worth is probably around $4.5 million.

I should be happy to explore this situation with you further, or have you, or your representative meet with the President of the company.

Cordially yours,

Edward Bernsohn

EB:nd

EXHIBIT D

HARRY S. SAMUELS 120 Broadway • New York, N. Y. (212) 349-5900

October 10, 1960

Mr. Max Banzhaf, Vice President
Armstrong Cork Company
Liberty Street
Lancaster, Pa.

Dear Max:

As per telephone conversation with you, I am hereby suggesting a formula Armstrong might want to offer to Johnson-Carper.

For each share of Johnson-Carper Common, I would offer one share of Armstrong $4.50 convertible Preferred $32.00 per convertible into Armstrong Common at $40.00 (1¼ Preferred for 1 Common).

The Johnson-Carper stockholder would receive $1.50 per share income which is higher than what they get. They would also have the opportunity to buy Armstrong Common at $40.00.

I would suggest that you let me handle Mr. Donald Jordan re: inviting him to Lancaster and having a meeting of your executives before hitting him with the offer and broaching terms to him.

When ever you are ready to discuss this matter further, since there is flexibility both up and down with respect to the proposed offer, I will be glad to meet with

Very truly yours,

Harry S. Samuels

HSS:dc
cc: Mr. Fred Donnelly

Dear Fred: [illegible] may not want to go to the [illegible] at the Bank [illegible] I have been [illegible] dont tell [illegible]

EXHIBIT D

EXHIBIT D

HARRY S. SAMUELS

110 Rockaway Turnpike, Lawrence, N. Y. (212) 327-
160 BROADWAY • NEW YORK, N.Y. 10038 • (212) RE 4-7042

October 21, 1956

Mr. Fred Donnelly
Armstrong Cork Company
Liberty Street
Lancaster, Pa.

Dear Fred:

After the many meetings and talks that we had in the last few weeks, I have given considerable thought to some companies that could be made available to Armstrong for examination and/or inspection, if you could develop an interest in any of them. Most of these companies that I am submitting to you are companies that I have been looking into for as many as twenty years and some even longer. I know the principals or their successors in most of them and I know something about the companies, and I have good reason to believe that I can make them available.

I am herewith listing some of these companies. After I give you the name of each company, I will give you one or two sentences of brief information that I have at the tip of my fingers and you can then decide if you want to look into them further. In addition, whereever I may have some report readily available, I will also send same on and if you indicate an interest I will obtain the last and most current information and will forward the same to you after which, of course, appointments can be made at your convenience.

1 - Advance Metal (Alhonte, California) - Lithographs and prints on metal for cans, bottle tops, jar tops, trays, snack tables, etc.

* 2 - Allen Industries - (N. Y. S. E.) Company manufactures rubber and tensile floor coverings and caters substantially to the automobile trade, selling them automobile mats and carpets, etc.

* 3 - Allied Kid Company - (N. Y. S. E.) Leather Processor

4 - American Seating Corporation - (N. Y. S. E.) - The largest manufacturer of seating for churches, synagogues, institutions, theatres, etc., etc.

5 - American Steel Wool - (Privately owned) - Company manufactures steel wool with soap in it similar to S. O. S.

EXHIBIT D

Mr. Fred Donnelly - Page Two

6 - A. P. C. - (Privately Owned) - This Company is one of the largest in the kidney remedies. Has a very fine large plant in the Bronx, N. Y., and does a very fine large and profitable nationwide business. Have known the owner for over thirty years.

7 - Art Metal Furniture Company (O. T. C.) - This Company is in Jamestown, New York and is one of the largest metal furniture companies in the world and also has a division that furnishes offices, whole buildings, institutions, etc. (They recently did the whole of the C. B. S. Building at Avenue of the Americas, N. Y. C.) I have been after this company for about twenty years and a block of mine recently acquired in open market operation, about thirty percent of the company. Excellent Company with excellent prospects for future earnings.

7A Barwick Carpet Company - Eugene Barwick, President. Very profitable carpet manufacturing company. However, it is located in Dalton, Georgia, which is a hotbed of bad labor situations. It is a very fine company.

8 - Burton Dixie (N. S. E.) - Very large manufacturing furniture company. Manufactures a very large line of dual purpose beds.

* 8A - L. E. Carpenter - (N. S. E.) - Largest manufacturer of wall covering in the Country.

* 9 - Carrier Corporation - N. Y. S. E.) - The largest in the air conditioning field.

10 - Dixie Dinettes - (O. T. C.) - A manufacturer of dinette furniture.

No * 11 - Eastern Can Company (A.S.E.) - Modern and newest of the can factories. Manufactures specialty cans in New Jersey.

* 12 - Food Manufacturing Company - (N. Y. S. E.) - I spoke to you about this and gave you the report.

* 13 - Foster Grant - (N. Y. S. E.)- Manufacturers of polymer and plastics and also makes one of the best and largest lines of sunglasses in the country.

14 - Heritage Furniture - (Privately Owned) - A small manufacturer of bedroom sets; also makes some dining room furniture.

15 - Irwin Manufacturing Company - Manufactures polyvynal chloride.

EXHIBIT D

Mr. Fred Donnelly - Page 3

No. * 16 - Jeannette Glass Company (A. S. E.) - This is a merger of two companies, manufacturing medium priced dinnerware.

17 - Kaiser Division of Kaiser - (N. Y. S. E.) - Manufactures concrete forms for buildings.

18 - Magland Carpet Company - Carlile, Pa. (A. S. E.) Very fine manufacturer of carpets.

18A- McGee Carpet Company, Bloomsberg, Pa. - Harry McGee, President. Privately owned, very fine company - profitable operation in carpet manufacturing.

* 19 - Mississippi Glass - (O.T. C.) - Large Manufacturer of institutional glass and glass with wire sandwiched in between.

* 20 - Overhead Door Corp. (A. S.E.) - Company manufactures metal automatic doors and partitions.

No. * 21 - Owens-Illinois - (O. T. C.) - A large manufacturer of glass containers and glass bottles.

22 - Pillied - (Privately Owned) - Manufactures tables - sold about 750,000 units in the year 1965 and during the year 1966 started manufacturing bedroom furniture in addition.

23 - Purepac - (O. T. C.) - Manufactures an old line of home remedies (not drugs). They also own and control the American Druggist syndicate, also known as A. D. S., which firm is close to 100 years old and which firm I sold to them many years ago. They also have a very fine plant in Elizabeth, New Jersey which used to be occupied by the American Type Founders.

No. 24 - Shenango China - (Privately Owned) - Manufactures a very fine line of china dinnerware, etc.

25 - Sunal - (O. T. C.) - A manufacturer of vinyl wall covering similar but smaller than L. E. Carpenter.

26 - Stephen Leeam - (Principally Owned) - Very fine carpet manufacturer - volume over $25,000,000 - over eighty percent in tufted. Very profitable business run by management since the owners are interested in various other things. Principals are interested in a deal.

No. 27 - Syracuse China - (O. T. C.) - One of the large china manufacturing companies in America. They supply most of the hotels, motels, and institutions and also sell to the department stores. I visited the plant only recently. Very fine operation.

EXHIBIT D .

28 - Stetson China - (Privately owned) - Manufacturers of one of the finest lines of dinnerware and I believe they also import china from abroad.

29 - Utility Appliance Corporation - Was purchased a few years ago by Republic Corporation - Listed on New York Stock Exchange. Company manufactures hot water heaters, stoves and air conditioning equipment.

* 30 - Wellman Corporation (A. S. E.) - Company manufactures tables and bedroom furniture. Also goes under the name Sunglow.

31 - Welbuilt Stove - (N. Y. S. E.) - Company manufactures a medium price line of stoves and unit air conditioners. They own two bedroom manufacturing companies one by the name of Ryland in Hickory, North Carolina and the other by the name of Unagusta in Georgia.

32 - Waste King Company - (O. T. C.) - Manufactures waste disposals and stoves. Have a very profitable operation in waste disposals in Los Angeles and have recently built two new stove plants in Kentucky and Mississippi.

Most Sincerely,

Mary S. Samuels

MSS:JC

P. S. With respect to those companies that I have checked (*) I have enclosed some material herein and material for the others will be forthcoming and/or at your request, we will rush full and detailed information for any company that you might want to explore.

MSS:JC
ENCLS. Lists
Reports

EXHIBIT D

HARRY S. SAMUELS

110 Rockaway Turnpike, Lawrence, N. Y. (212) 327-0686
1501 BROADWAY • NEW YORK, N.Y. 10036 • (212) BR 8-8040

October 21, 1966

Mr. Fred Donnelly
Armstrong Cork Company
Liberty Street
Lancaster, Pa.

Dear Fred: Att: Miss Sara Snyder

This morning I am loading you with stuff, but I would ask you to pay mind to this letter immediately as it is a first on the market and in my opinion looks like a terrific buy at least worth an immediate investigation.

The information with respect to this Company is attached hereto. The name of the company is Dock Chemical Company, Kansas City. They manufacture a complete line of insecticides under the name of "Real Kill". They interestingly enough make their own plastic containers.

If you think you are interested, please let me know immediately so that I can get you additional data.

Most Sincerely,

Harry S. Samuels

HSS:JC

EXHIBIT D

Memorandum Re: Midwestern Chemical Company

Sales	$7,000,000.00
Net after tax	500,000.00

Growth: Growth has been steady and will continue at 10 to 15% per year.

Management: Present management will remain. Chief executive and principal stockholder is 61 and will remain reasonable period.

Balance Sheet: Five to one current position -- usually has $400,000.00 to $500,000.00 cash. Net worth approximately $2,500,000.00.

Distribution: To wholesale druggists and grocers, wholesale hardware dealers, department stores, drug and grocery chains, milling companies, grain dealers, 7,000 accounts. No salesman except those directing liaison with brokers who handle sales.

Territory: Entire United States and several foreign countries. Carries stock in 30 warehouses in U. S.

Employees: Approximately 200.

Sale Price: 10 to 11 times after tax earnings. For cash with reasonable down payment and long term pay out. Will trade for preferred stock.

EXHIBIT D

HARRY S. SAMUELS

110 Rockaway Turnpike, Lawrence, N. Y. (212) 327-0800
1501 BROADWAY - NEW YORK, N. Y. 10036 - (212) 947-5500

October 24, 1966

Mr. Fred Donnelly
Armstrong Cork Company
Liberty Street
Lancaster, Pa.

Dear Fred:

My attention was just called to the availability of the Babo Trademark business and formulas owned by the D. T. Babbitt Company.

I have been involved in this Babo deal for over twenty years and it has recently gone through various kinds of metamorphosis and be that as it may, they now do a business volume of about $5,000,000.00 mostly with institutions. At one time it used to be a very well known household word known to consumers. Because of the high cost of advertising, they have been more or less abandoned. The business is available with or without plant or equipment. It occurred to me that this might fit in with your "epic" line.

Do let me know immediately whether there is any interest, since you are the first to know about it.

Most Sincerely,

Harry S. Samuels

HSS:JC

EXHIBIT D

S. SAMUELS & CO. 110 Mahoney Terminal, Lawrence, N. Y. (212) 327-0300
1501 BROADWAY • NEW YORK, N. Y. 10036 • (212) PL 9-8940

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November 2, 1966

Mr. Fred Donnelly
Armstrong Cork Corporation
Mahoney Street
Lancaster, Pa.

Dear Fred:

This following up my letter to you dated October 21, 1966 and enclosing Litchfield and annual reports on The Jeanette Glass Company, Ohean-Hocken Glass Company, Vaster Ring Corporation, Foster Grant Company, Inc.

Most Sincerely,

Harry S. Samuels

HSS:mc
Encl: Litchfield and Reports.

EXHIBIT D

HARRY S. SAMUELS
110 Bartlett Turnpike, Lawrence, N. Y. (212) 327-0
1501 BROADWAY • NEW YORK, N.Y. 10036 • (212) PE 6-0040

November 25, 1966

Mr. Fred Donnelly
Armstrong Cork Corporation
Lancaster, Pennsylvania

Dear Fred:

I am transmitting herewith several documents on the Arrow Metal Products Corporation of Haskell, New Jersey. As you will note, this company makes chalet and rancher storage houses. They have the following approximate historic record of sales:

1963 - $2,000,000.00
1964 - 4,000,000.00
1965 - 8,000,000.00
1966 - 12,000,000.00

They have projected after taxes earnings of approximately $300,000 for 1966 despite interest charges of approximately $300,000 but expansion of production facilities has been financed internally which has depleted working capital. Production facilities were enlarged this year to increase capacity to twenty-two million.

The enclosures include (1) Product Literature (2) Some recent financial statements (3) Cash flow projection for three different levels of sales and (4) notes on a meeting which was recently held for the purpose of looking toward a public offering.

The principals are looking for a tax free exchange of stock. The management of the company would stay since there is only one principal who is in his seventies and is not very active. The other partners who are young would stay with the business. They would be willing to do a deal on a contingent basis.

Please let me know of your interest and I can arrange for a meeting and supply you with additional information.

Most Sincerely,

Harry S. Samuels

HSS:JC
ENCLS: Four

EXHIBIT D

S. SAMUELS 150 Broadway Terminal, Lawrence, N. Y. (212) 327-0303
150 BROADWAY NEW YORK, N.Y. 10038 (212) FR 6-8045

January 3, 1967

Mr. Fred Donnelly
Armstrong Cork Company
Liberty Street
Lancaster, Pa.

Dear Fred:

I am enclosing herewith a letter I received from Raritan Plastics Corporation, indicating an interest to sell blow molding equipment.

I was wondering if there might be any interest on the part of your company in this.

I would appreciate your returning the material, if there is no interest.

Most Sincerely,

Harry S. Samuels

HSS:JC
ENCL: Raritan plastics material.

EXHIBIT D

110 Rockaway Turnpike, Lawrence, N. Y. (212) 327-2000

1/5/68

1818

January 5, 1968

Mr. Fred Donnelly
Armstrong Cork Company
Liberty Street
Lancaster, Pennsylvania

Dear Fred:

I am enclosing herewith a catalog on the S. J. Bailey & Sons, Inc. This company is the largest manufacturer of unpainted furniture in the United States. They also make some painted furniture which you will see pictured on the last page of the catalog. They do a volume of a little over five million dollars and their plant is working on over capacity and their customers are on an allotment basis. This company is located in Pennsylvania near Scranton, and uses mostly New England lumber so that a New England plant in addition to these two plants are indicated. One plant is in Walton, New York. As an aside, I may say that there are several wood working plants available in Massachusetts that I heard of not too long ago.

The man who brought it to me is a man who used to be a buyer for Gimbel Brothers of unpainted furniture. He is now associated with me in my office. He tells me that this line is the outstanding line in the world and under the right sponsorship could double, treble or quadruple the volume in short order. The business is owned privately by Mr. Jay Bailey and he visited with my man, Benny Levido, recently and indicated an interest in selling to the "right" people.

I would appreciate it if you would take this matter up immediately with your people to see if there could be an interest. As I see it, the reason for your possible interest would be the following: First, if you are going to go into the bedroom or dining room furniture business, this is a very good basis for it; secondly some of the woods or synchronies that your firm uses in the ceilings or wall coverings could be well used as fireplaces for a good portion of this furniture. I suggest, in any event, that you give this your immediate and sincere attention and advise me.

I am going on a trip to Boston and Chicago and will discuss the other matter that we talked about on the telephone when I return. In the interim I do not think that you or I should be seriously concerned with it.

Most Sincerely,

Harry S. Samuels

HSS:JC
ENCL: Bailey Catalog.

EXHIBIT D

HARRY S. SAMUELS

110 Jericho Turnpike, Lawrence, L. I. N. Y. (212) 538-0
[illegible] BROADWAY • NEW YORK, N.Y. 10036 • (212) 921-6020

198

February 10, 1967

Mr. Fred Pannelley
Armstrong Cork Company
Liberty Street
Lancaster, Pennsylvania

Dear Fred:

As per my telephone conversation with you the other day, I am enclosing herewith letter and financial figures on the Modern Carpet Industrial situation.

You might wish to discuss this with Harry Janson and if you wish, I can arrange for a meeting with the president of Scripto and I will also arrange for a visit and inspection of the plant and equipment.

When you are through with the enclosures, I would appreciate it if you would return the same.

Most Sincerely,

Harry S. Samuels

HSS:JC
Encl.

EXHIBIT D

HARRY S. SAMUELS
110 Rockaway Turnpike, Lawrence, N. Y. (212) 327-0800
1501 BROADWAY • NEW YORK • (212) 221-1600

March 3, 1967

205

Mr. Fred Donnelley
Armstrong Cork Company
Liberty Street
Lancaster, Pa. 17604

Dear Fred:

I was in California when I read of your announcement of the purchase of the Bab-o Trademarks and I want to take this opportunity of congratulating you and also upon our finally closing our first transaction. Even though it is a small one, I hope that it will lead to much bigger ones hereafter.

Immediately upon the publication of this item, I received a telephone call from my friend Mr. Kurt Grunebaum who is an investment banker and sits on the Board of Directors of the Standard International Corporation. He is the head of the New York Hanseatic Corporation which is the largest over the counter house in the Country. He insisted that I immediately bring to your attention the Standard Household Products* Corporation a division of Standard International Corporation.

He told me that this business is not for sale as such and has never been offered to anyone. He also insists that if you are interested in looking into it, he would only discuss the matter with you and one other executive of your company who could be the one in charge of your household division. He told me that he has some ideas that he wants to present to the Board of Directors of the parent corporation which is the Standard International Corporation and you will find a line of the products in pictures on page ten of the enclosed report. He would very much like to meet with you in the immediate future if you can arrange it.

Since he assured me that this business is not on the market and has never been offered to anyone, I could not give him a misleading negative reply as you indicated in your letter of February 14th since you do not know what the company is and could not possibly know if there is an interest in it or not.

I would, therefore, appreciate it if you would give this matter your immediate consideration and advise me, now that you know what the company is, whether you would like to meet with Mr. Grunebaum and discuss the matter. This, of course, is in the strictest of confidence and I am sure that you will keep it as such.

Most Sincerely,

Harry S. Samuels

* Volume of this Division $20,000,000
Earnings B. T. $2,000,000

HSS:JC
ENCL: Report 1966

EXHIBIT D

HARRY S. SAMUELS 110 Lockwood Turnpike, Lockwood, N. Y. (212) 327-0[illegible]
[illegible] BROADWAY • NEW YORK, N.Y. 10038 • (212) [illegible]

March 10, 1967

Mr. Fred Donnelley
Armstrong Cork Company
Liberty Street
Lancaster, Pennsylvania

Dear Fred:

I should like to bring the following situation to your attention as a possible acquisition for Armstrong. As an aside, you should know that we have a written contract with the seller to seek a buyer for this situation and, in addition, the seller is responsible for any broker's or finder's fees.

The division that I think you should be interested in does fifteen million dollars worth of business in cast iron pipe and soil pipe. With the resurgence of building starts and the emphasis on water recovery systems, this would seem like a growing business. There will be a big need for piping to transport water from recovery plants to the point of use.

If you are interested in exploring the above, I should be happy to supply you with a writeup and financial data.

I look forward to hearing from you on the above.

Most Sincerely,

Harry S. Samuels

HSS:JC

Hope you had a wonderful Christmas

EXHIBIT D

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HARRY S. SAMUELS

MERGERS • ACQUISITIONS • FINANCING

EDWARD BERNSOHN

110 ROCKAWAY TURNPIKE
LAWRENCE, N.Y. 11559

March 31, 1967

Mr. Fred Donnelley
Armstrong Cork Company
Liberty Street
Lancaster, Pa.

Dear Mr. Donnelley:

Mr. Harry Samuels suggested that I write to you about the following possible acquisition for Armstrong Cork. The rationale of suggesting this company to you is that Armstrong provides many of the furnishings that go into a home and, therefore, would have a captive market for many of its products.

In addition to the conventional home, the mobile home business is now a significant part of our economy. The company I am suggesting to you does several tens of millions of dollars in the manufacture of mobile homes which are made as either permanent or semi-permanent dwellings. We are currently working with the bank to find a suitable spot for this business and you are the first company we are approaching with respect to this situation.

Let me know of your interest and I can provide you with a complete package of material on the above and indicate how we can proceed.

I look forward to hearing from you on the above and meeting with you in the near future.

Cordially yours,

Edward Bernsohn

ED:JC

EXHIBIT D

Mr. Tom A. Finch
James C. Darsey
J. S. Jennings

Darsey

SCHEDULE OF VISIT
TO THE
ARMSTRONG CORK COMPANY

January 4, 5 and 6, 1967

Shamrock Furniture Industries, Inc.
Shamrock, North Carolina

EXHIBIT E

Wednesday, Januar

3:30 p.m.

4:00 p.m.

5:30 p.m.

6:30 p.m.

DEFENDANT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

v 4

Arrival, Armstrong Plane - Greensboro-High Point

On board:
Max Banzhaf, Staff Vice-President

Takeoff for Lancaster

Arrival, Lancaster

Dinner - Lancaster Country Club

Attending:
C. N. Painter,
Executive Vice-President
J. H. Diana, Senior Vice-President
F. S. Donnelly, Jr., Treasurer
M. D.Ford, Vice-President,
Technical Services
R. L. Ellis, Controller
Max Banzhaf, Staff Vice-President

Accommodations: Host Town Motel
30 Keller Avenue
Lancaster, Pa.
(717-393-1551)

EXHIBIT E

Thursday, January 5

8:00 a.m.	Departure from motel for Armstrong Office Building	
8:15-9:00 a.m.	Tour Display Room - General Office	
9:00-12:00 Noon	Armstrong Research facilities:	F. B. Menger, Director of Research J. E. Hazeltine, Jr., Assistant Director of Research
	A. Laboratory Building	
	Composite Materials in Floor Research	
	Composite Materials in Industry Products Research	
	Physics Research	
	Chemistry Research	
12:00-12:45 p.m.	Lunch - Engineering Building	Attending: M. D. Ford, Vice-President, Technical Services J. P. Holloway, Director of Engineering W. H. VanBuren, Assistant Director of Engineering F. B. Menger, Director of Research J. E. Hazeltine, Jr., Assistant Director of Research Dr. D. T. Zentmeyer, General Manager, Floor Products Research R. A. Garrett, General Manager, Industry Products Research Dr. G. W. Scott, Jr., General Manager, Physics Dr. N. L. Miller, General Manager, Chemistry D. D. Browning, General Manager, Building Products Research W. P. Bramlett, Jr., General Manager, Packaging Materials Research Max Banzhaf, Staff Vice-President

Thursday, January 5 (continued)

12:45-1:30 p.m. Tour Engineering Building

1:30-5:30 p.m. Armstrong Research facilities:

B. Pilot Plant Building

Fibers and Forming

Foams

Plastic Molding

Adhesives, Elastomers, Non-Wovens

Calendering, Extrusion, Embossing, Valley Printing, Flocking, Laminating

6:45 p.m. Dinner - Hamilton Club

Attending:
M. J. Warnock, President
J. H. Binns, Senior Vice-President
H. A. Jensen, Vice-President and General Manager, Floor and Consumer Products Operations
J. V. Jones, Vice-President and General Manager, Building, Industry and Defense Products Operations
W. W. Pedrick, Vice-President and General Manager, Packaging Materials Operations
F. S. Donnelly, Jr., Treasurer
Max Banzhaf, Staff Vice-President

EXHIBIT F

schedule for Mrs Deitch

Friday, January 6

8:00 a.m.	Depart for Armstrong Office Building (Have bags packed. They will be picked up in your rooms.)	
8:15-9:45 a.m.	Styling Center	R. F. Smith, Director, Product Styling and Design
9:45-10:45 a.m.	Translating Design to Manufacturing	R. F. Smith L. D. Bishop, Plant Manager, Lancaster Floor Plant
10:45-1:00 p.m.	Advertising, Promotion, Dealer Development	C. N. Moodie, Jr., Director of Advertising and Promotion
1:00-2:30 p.m.	Lunch - Lancaster County Club	Attending: M. J. Warnock, President C. N. Painter, Executive Vice-Presid J. H. Binns, Senior Vice-President F. S. Donnelly, Jr., Treasurer Max Banzhaf, Staff Vice-President
2:45 p.m.	Depart for Airport	
3:15 p.m.	Takeoff for Philadelphia and Greensboro-High Point	

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EXHIBIT E

Schedule for Mr. Jennings

Friday, January 6

8:30 a.m.	Depart for Armstrong Office Building (Have bags packed. They will be picked up in your rooms.)	
8:45-9:15 a.m.	Employee Relations	F. C. Edwards, Director of Employee Relations
9:15-10:15 a.m.	Technical Services Industrial Engineering Production Planning Quality Control	M. D. Ford, Vice-President, Technical Services
10:15-1:00 p.m.	Tour - Lancaster Floor Plant	M. D. Ford, Vice-President, Technical Services L. D. Bishop, Plant Manager, Lancaster Floor Plant
1:00-2:30 p.m.	Lunch - Lancaster Country Club	Attending: M. J. Warnock, President C. N. Painter, Executive Vice-President J. H. Binns, Senior Vice-President F. S. Donnelly, Jr., Treasurer Max Banzhaf, Staff Vice-President
2:45 p.m.	Depart for Airport	
3:15 p.m.	Takeoff for Philadelphia and Greensboro-High Point	
6:30 p.m.	Arrival - Greensboro-High Point	

1967

EXHIBIT E

Schedule for Mrs. Darby

Friday, January 6

8:[illegible] a.m.	Depart for Armstrong Office Building (Have bags packed. They will be picked up in your rooms.)	
9:15-10:00 a.m.	Controller's Functions including Data Center	R. L. Ellis, Controller
10:00-10:45 a.m.	Economic and Marketing Research	Dr. A. G. Matamoros, Chief Economist
10:45-12:00 p.m.	Treasurer's Office	F. S. Donnelly, Jr., Treasurer
12:00-2:30 p.m.	Lunch - Lancaster Country Club	Attending: M. J. Warnock, President C. N. Painter, Executive Vice-President J. H. Binns, Senior Vice-President F. S. Donnelly, Jr., Treasurer Max Banzhaf, Staff Vice-President
2:[illegible] p.m.	Depart for Airport	
3:15 p.m.	Takeoff for Philadelphia and Greensboro-High Point	
6:30 p.m.	Arrival - Greensboro-High Point	

EXHIBIT E

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

F - [illegible]

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Thomasville FURNITURE INDUSTRIES, INC.

THOMASVILLE, NORTH CAROLINA

TOM A. FINCH
PRESIDENT

January 19, 1967

Mr. M. J. Warnock, President
Armstrong Cork Company
Lancaster, Pennsylvania

Dear "Moose":

On behalf of Jim Dorety, Tom Jennings and myself, I can't tell you how much I appreciate all of the wonderful time and attention that you lavished on us during our visit with you and all of your associates at Armstrong. We were, obviously, impressed with the physical facilities, but even more so with the tremendous competence of all of your management group.

I still expect to be in touch with you within the next several weeks and to advise you at that time our decision as to the matters which I discussed with you at the conclusion of our visit.

Again to all of you, we send you our most sincere thanks and appreciation for the many courtesies which you extended to us during our visit and trust that we shall have the opportunity in some small way to repay you for our wonderful visit with you.

Best personal regards.

Sincerely,

Tom A. Finch, President

TAF:y

EXHIBIT F

DEFENDANT

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

G - Del

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Thomasville FURNITURE INDUSTRIES, INC.

THOMASVILLE, NORTH CAROLINA

TOM A. FINCH
PRESIDENT

April 28, 1967

Mr. M. J. Warnock, President
Armstrong Cork Company
Lancaster, Pennsylvania

Dear "Moose":

Thank you so very much for the gracious hospitality that you and Jim extended to me in Philadelphia yesterday. I thoroughly enjoyed our frank and informal discussions and have already begun to think seriously about them.

Enclosed you will find several copies of our 1966 Annual Report and proxy solicitations for our annual meeting held in February. If you need additional copies, please do not hesitate to call me and I shall be very pleased to send them to you.

I n checking my files I find that I have only one copy of your 1966 Annual Report and do not have a copy of your proxy solicitation. I would like to ask you at your convenience to send me several more copies of the annual report and of the proxy solicitation.

I will plan to call you on Tuesday, May 9. Best personal regards to you and Jim.

Very truly yours,

Tom A. Finch, President

TAF:y

Enclosures

DEFENDANT

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

H-id

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July 2, 1968

GENERAL BULLETIN TO ALL DEPARTMENTS AND DIVISIONS

AGREEMENT IN PRINCIPLE REACHED
FOR THOMASVILLE FURNITURE INDUSTRIES, INC., TO AFFILIATE
WITH ARMSTRONG

Agreement in principle was reached in Thomasville, North Carolina, today for Thomasville Furniture Industries, Inc., to affiliate with the Company.

The following statement was released to news media:

JULY 2, 1968 -- Agreement has been reached in principle for Thomasville Furniture Industries, Inc., to affiliate with Armstrong Cork Company, it was jointly announced today in Thomasville, North Carolina, by Tom A. Finch, Thomasville President, and James H. Binns, Armstrong President.

The transaction, which is subject to approval by the Boards of Directors of the two companies, and the shareholders of Thomasville Furniture Industries, Inc., and to the obtaining of a favorable ruling from the Commissioner of Internal Revenue, calls for an exchange of one share of Thomasville common stock for seven-tenths (7/10) of a share of Armstrong common stock, and a share-for-share exchange of Thomasville $2.375 preferred for a new series of Armstrong $2.375 preferred.

Thomasville Furniture Industries, Inc., a leading national manufacturer of quality furniture, has its headquarters and twelve plants in Thomasville and five other manufacturing facilities in North Carolina. It also has a hardwood dimension plant in Mississippi.

The furniture company's annual sales in the fiscal year ended November 30, 1967, were $65,716,000, with net earnings of $5,042,000, or $1.86 per common share. Thomasville common stock is traded on the New York Stock Exchange, and as of May 31, 1968, there were 2,719,850 shares of common stock and 100,000 shares of $2.375 preferred stock outstanding.

"Thomasville has achieved a position of leadership in the highly fragmented furniture industry through innovative styling, craftsmanship manufacturing, and imaginative merchandising of its broad lines of both traditional and modern collections," Mr. Binns said. "It has made an impressive growth record in sales and earnings, and its distinctive furniture will complement Armstrong's lines of flooring, carpeting, wall paneling, and ceiling systems."

"This affiliation should strengthen both businesses and enable us to take full advantage of the several rapidly expanding opportunities in the interior furnishing field," Mr. Finch said. "Armstrong bolsters its position with furniture, and we at Thomasville reinforce our ability to meet the technological revolution now underway in the furniture industry with access to Armstrong's research and technical resources."

Mr. Binns said that if the transaction is completed, Thomasville Furniture would operate as a subsidiary with no loss of identity or change in management. Mr. Finch would continue in charge of furniture operations and also become actively involved in the management of Armstrong's other businesses.

ARMSTRONG CORK COMPANY

EXHIBIT H

DEFENDANT

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

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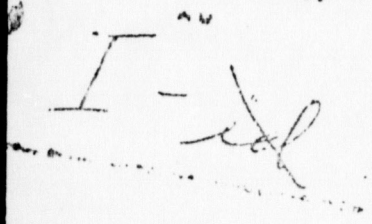
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

FURNITURE INDUSTRY AREA



	CLEVELAND	TACOMA	
	YANKEE	MFG CO	
NO OF PAID HOLIDAYS	0	0	7 DO 3 DO NOT
PAY FOR HOLIDAY HOURS	ST. TIME	ST. TIME	8 ST. TIME 2 PREMIUM
PAY FOR SATURDAY	ST. TIME	ST. TIME	
PAY FOR SUNDAY	ST. TIME	ST. TIME	
SHIFT DIFFERENTIAL	5¢ (2ND)	5¢ (2ND)	2 DO 8 DO NOT
VACATION SCHEDULE	NONE	AFTER 1YR -1 WEEK PAID VAC.	8 DO 2 DO NOT
JURY DUTY PAY	NONE	NONE	2 DO 8 DO NOT
FUNERAL PAY	NONE	NONE	
CALL-IN PAY	NONE	NONE	
REST PERIODS (PAID)	NONE	YES 2-10 MIN PERIODS	9 DO 1 DOES NOT
RENTS		5% RATES 6% MEDICAL 4 ATTEND. WKRS	4 DO 6 DO NOT

** 21 OF 23 HAVE RENTS IN LIEU OF VACATION

33

EXHIBIT I

FILED
U. S. DIST. COURT
S. D. OF N. Y.

	CLEVELAND TABLE CO	ACCO MFG CO	FURNITURE INDUSTRY FURNITURE PRODUCTS ASSOCIATED INDUSTRIES 10 FURNITURE COMPANIES 4 DO 4 DO NOT
PENSION	NONE	NONE	ALL DO WITH PENSION PLANS PAY FULL COST
HOSPITALIZATION	$5/DAY	$10/DAY 31 DAYS	
EXTRAS	$50 MAX	$100 MAX	
SURGICAL	$150 MAX	$200 MAX	
CONTRIBUTORY	FREE	FREE	
LIFE INSURANCE	$1,000 FREE	$1,000 FREE	
ACCIDENTAL DEATH & DISMEMBERMENT INSURANCE	$1,000 FREE	$1,000 FREE	

EXHIBIT

...AL SERVICE DEPT. WORK - 1945

	EFIN – LAMBERT, ETC	THEMBERHILL HOSPITAL	HERSHEY FURNITURE CO	(UNION (FROM FENDLER'S LIFE INSURANCE CO OF CHARLOTTE)
...OT	...NE	NONE	YES	NONE
			IPAGE $1/Mo for life service	
...OT	...AX ...HY		$9/DAY	$ 10.50/DAY
	31 ...YS		70 DAYS	70 DAYS
	...1/2 MAX		YES	$1.05 MAX
...IES	$2... MAX		$200 MAX	$200 MAX
			CONTRIBUTORY PLAN	2/3 PAID BY COMPANY
	$2...		YES	—
	$2...		YES	—

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DEFENDANT'S EXHIBIT
FILED
U. S. DIST. COURT
S. D. OF N. Y.
AM
K - 2d

(35)

1 CURRENT ASSETS
a TOTAL ASSETS
CURR. LIAB. (DEBTS)

2 NET SALES

3 " PROFIT

4 TANGIBLE NET WORTH (Cap. Prof. + Com Stk + Surp Less

5 NET WORKING CAPITAL

6 INVENTORY (Total)

7 " (Less Surplus)

8 FIXED ASSETS NET OF Reserves

9 FUNDED DEBT

10 TOTAL DEBT

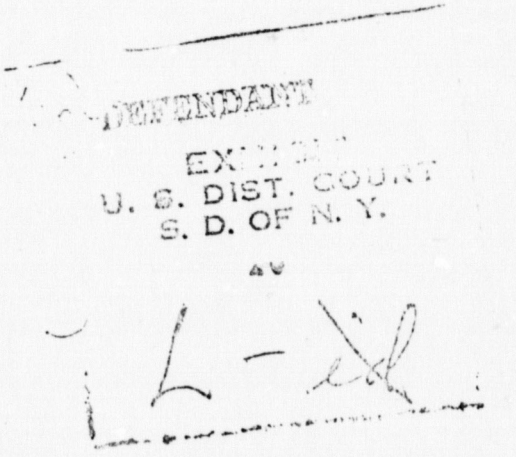
11 NOTES & NOTES RECEIVABLE

CURRENT ASSETS
1 " DEBT =
PROFIT
2 SALES
PROFIT
3 TANGIBLE NET WORTH
PROFIT
4 NET WORKING CAPITAL
NET SALES
5 TANG. NET WORTH =
NET SALES
6 NET WORKING CAP =
7 COLLECT. REC. =

NEE

1964 Results

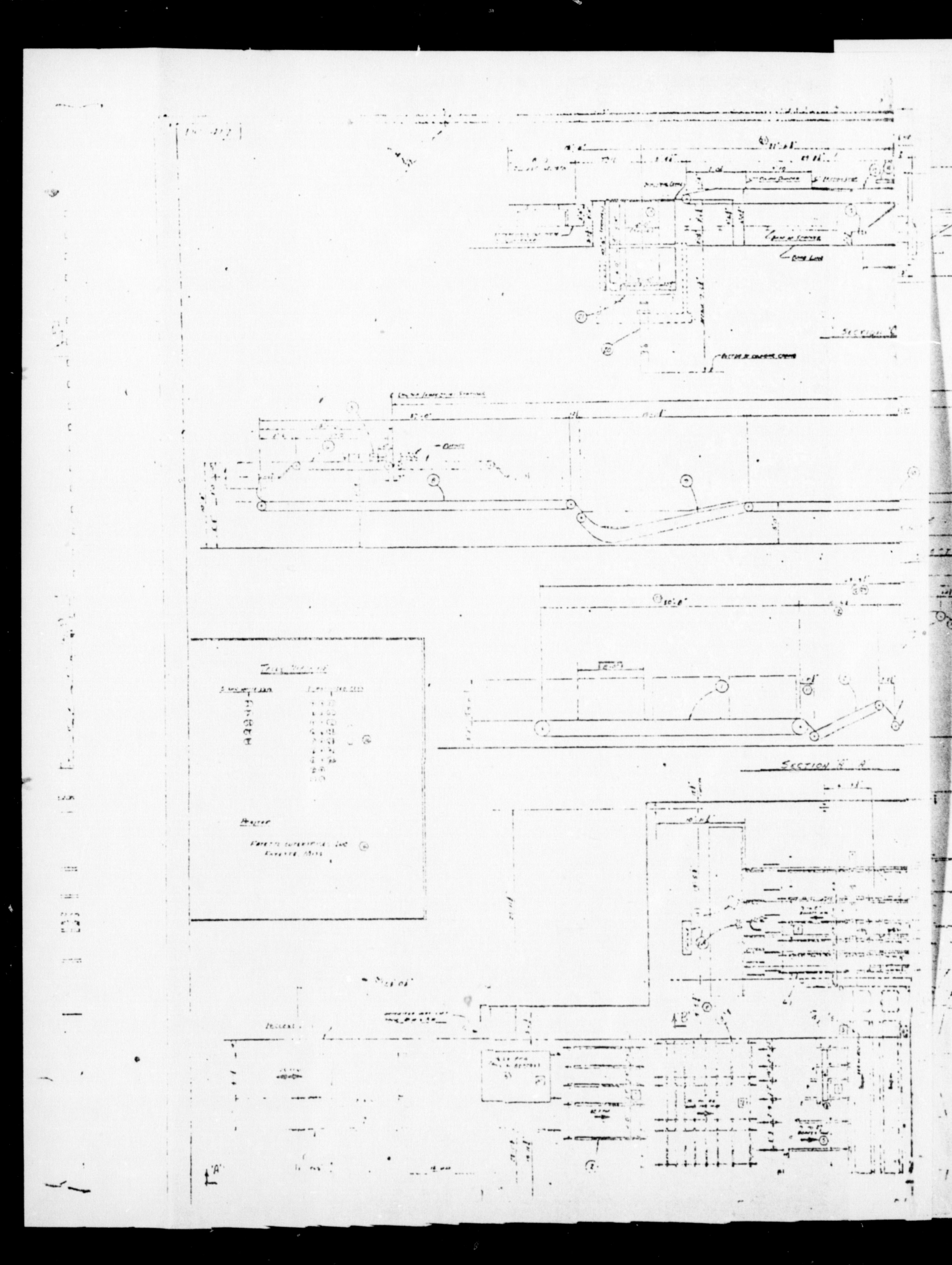
	Buffalo (000)	Jhaveri Med. Low Economical.		Grace Co.		Kroehler	
	39,038		20,339	4,328		37,352	12,263
	41,221		28,631	7,388		50,840	15,154
	8053		5,282	1,587		8,030	6,217
	68,193 = 1,337/day		50328 = 138	43 weeks 6162 / Proj. 7 3011 = 22		87,181 = 233	33,634 = 92
	4,329	7.7 times	4,290	43 weeks 236 / Proj. 307	5.2 times	1,822	406
(Equity)	33168		23349	1,876		38,529	7,437
	21985		15057	2,741		24,324	4,618
	14832		9191	2190		16694	3275
	?		?	?			
	10959		8239	2935		17763	3252
	0		0	2,915		4,281	452
	8052		5282	5,502		12,311	6717
(Cash)	10,003		6775	1531		11,778	2976
TIMES =	3.7	4.4 2.7 1.8	3.9	2.7 3.8		4.0	1.7
o/s	6.3	4.5 2.8 1.6	8.5	4.2		2.1	1.8
o/s	13.1	11.2 9.7 5.3	18.4	16.2		4.7	4.8
o/o	19.7	14.9 7.5	28.5	11.2		7.5	8.8
TIMES =	2.1	3.5 2.4	2.2	4.2		2.3	2.1
n =	3.1	5.2 3.4	3.3	2.9		3.6	4.3
DAYS =	53	43 53	49	70		49	41

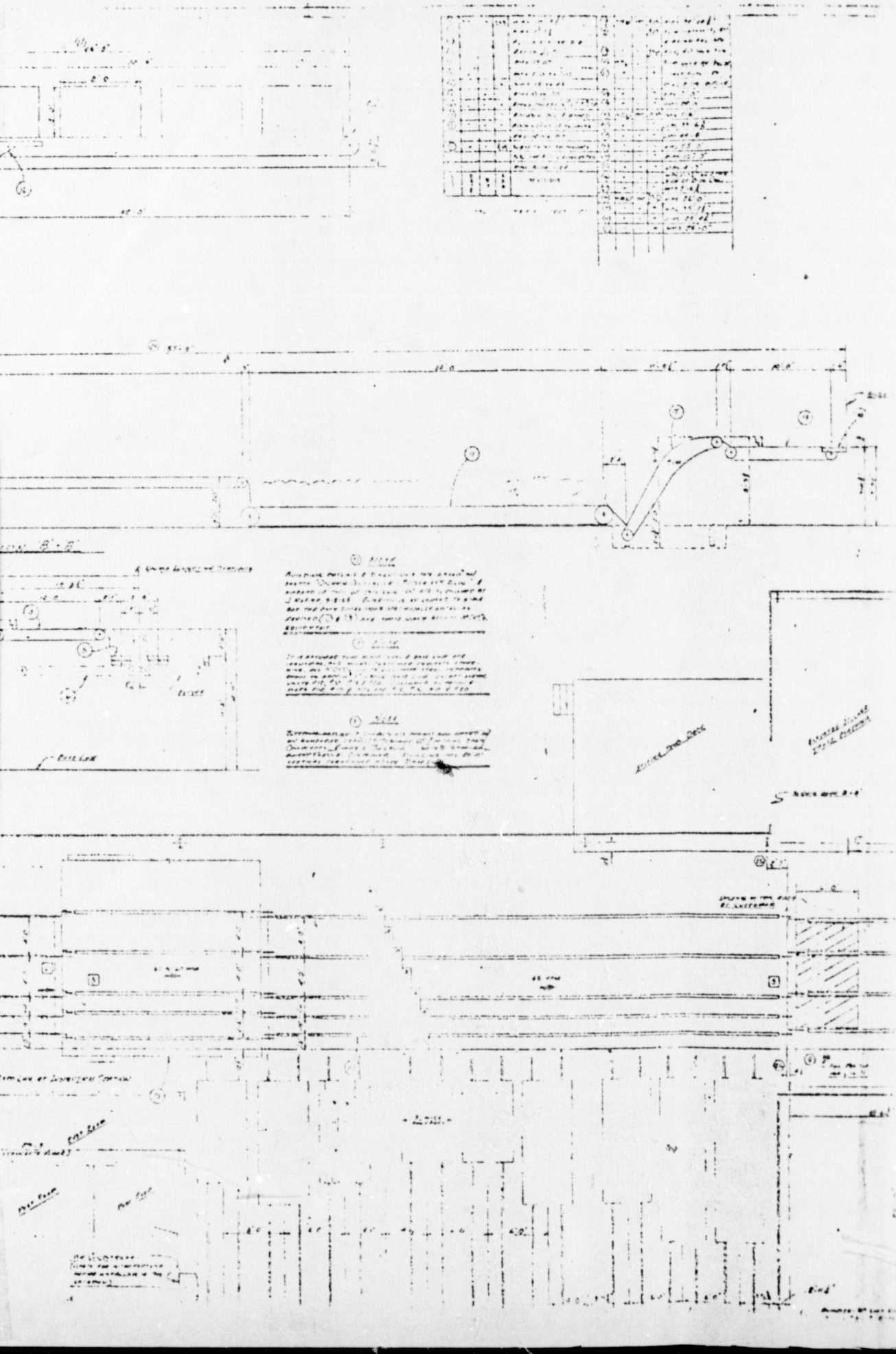

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

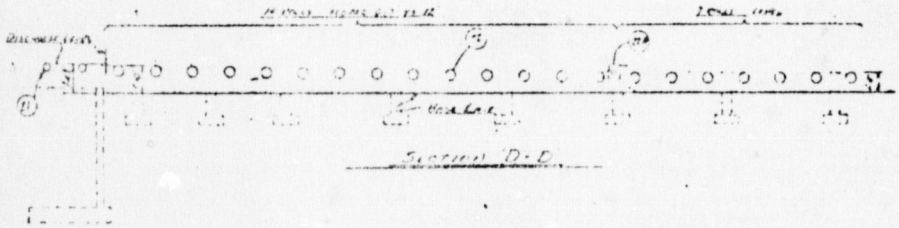
(71)

Layout of Thomasville's
Plant in Miss. - furnished
by Moore Dry Kiln Co
3/7/66 in Jacksonville
Fla.

EXHIBIT L

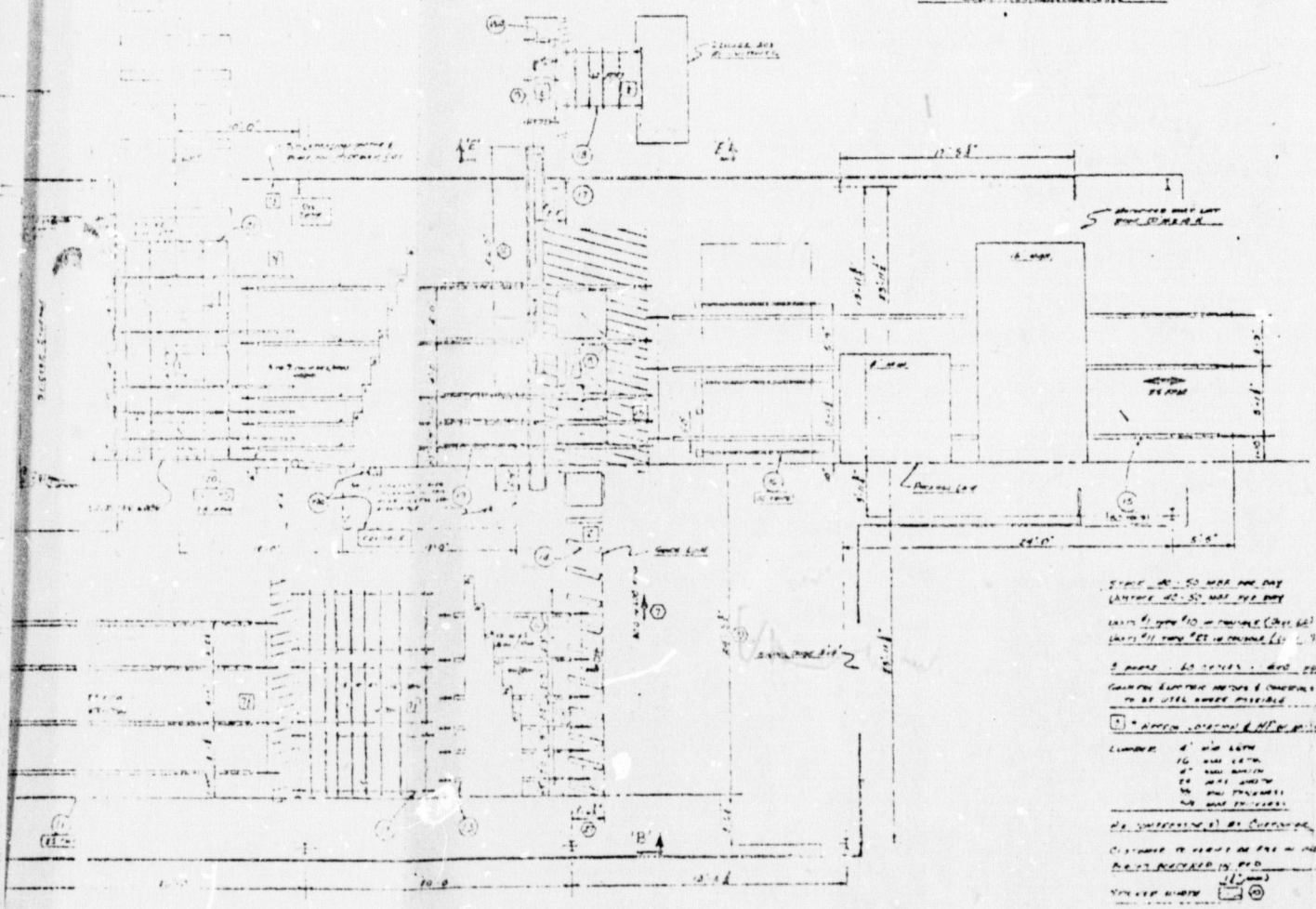






SECTION 'D-D'

SECTION 'E-E'



REVISED 9-21-65
REVISED 9-2-65
REVISED 7-23-65

REVISED 6-30-65

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

D-61

Layout of Thomasville's
plant in Miss. - furnished
by Moore Dry Kiln Co
3/7/66 in Jacksonville
Fla.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY S. SAMUELS, Plaintiff, -against- ARMSTRONG CORK COMPANY, Defendant.	69 Civ. 3022 (RHL) PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiff, Harry S. Samuels, by his attorneys Shea Gould Climenko & Kramer respectfully submit the following proposed findings of fact and conclusions of law.

FINDINGS OF FACT

General

1. This is an action by a business broker for monies due him for his services rendered pursuant to a written agreement with defendant (the "Agreement"), which provided for plaintiff to "act as a finder, broker or negotiator for the submission of, or other action with reference to, proposals involving companies for possible acquisition by [defendant]." (def.'s Exh. A)* The plaintiff has made two claims. The first claim seeks compensation for services rendered in connection with the merger of Thomasville Furniture Industries, Inc. ("Thomasville") into the defendant.

* Numbers or letters in parentheses preceded by "Ex." refer to Exhibits, and numbers in parentheses preceded by the name of a witness or "Tr." refer to pages of the transcript.

The second seeks compensation for services rendered in connection with the acquisition of certain assets of B.T. Babbitt, Inc. ("Babbitt"), by the defendant.

Thomasville

2. The nature of plaintiff's case with respect to the Thomasville merger is that the plaintiff perform certain services as a business broker for defendant pursuant to the Agreement. These services included the submission of Thomasville as an acquisition candidate for defendant, and convincing defendant that Thomasville was available for acquisition. Thereafter defendant wrongfully terminated the Agreement in order to prevent plaintiff from completely performing under the Agreement. Plaintiff contends that because of this breach plaintiff has been damaged to the extend of the consideration provided for in the Agreement, which is approximately $4.5 million, or, alternatively, that plaintiff is entitled to the value of the services he had performed under the Agreement on a theory of quantum meruit.

3. Plaintiff is an experienced broker, having been exclusively engaged as a business broker for over 34 years (Samuels 26). On defendant's request (Samuels 32), plaintiff visited defendant at its Lancaster, Pennsylvania headquarters on August 10, 1966 for the purpose of discussing the possibility of plaintiff working with defendant as a finder of acquisitions in a number of areas (Donnelly 304; Samuels 34). The plaintiff met again with officers of defendant on August 25, 1966 and on such

date entered into the Agreement (Samuels 41; Donnelly 307). As quoted above the Agreement provided for plaintiff to "act as a finder, broker or negotiator for the submission of companies ..." to defendant.

4. The plaintiff was aware that Thomasville might be available for acquisition, and in particular he was aware that the president of Thomasville, Thomas A. Finch, Jr., had conversations with another large company, Mohasco Carpet Company ("Mohasco") concerning the acquisition of Thomasville by Mohasco (Samuels 51). Finch admitted that he had had a conversation with the president of Mohasco concerning such subject (Finch 232). The plaintiff had previously been introduced to Finch in January 1965 (Samuels 27-30; Finch 233).

5. At the Lancaster meetings on August 10th and 25th, and on the telephone during this period and through December, 1966, the plaintiff advised officers of defendant that Thomasville would be an excellent acquisition candidate and that it was available (Samuels 34-37, 51-53, 90-91, 98-99, 112, 116). Prior to these August meetings between defendant and plaintiff, the defendant never had any discussions with Thomasville concerning acquisition or merger (Finch 227; Banzhaf 277-279).

6. Mr. Frederick Donnelly, Treasurer of defendant during 1966-1967 requested Samuels "to go right ahead and get it [Thomasville] for us" (Samuels 52), and requested plaintiff to arrange a meeting between defendant and Thomasville (Samuels 56-57). Plaintiff tried to reach Finch on the telephone but was

unsuccessful (Samuels 53; Finch 228; pltf.'s Exh. 19). Samuels told Donnelly that he would get to see Finch personally at the furniture show in Chicago in January (Samuels 53).

7. At no time did defendant advise plaintiff that Thomasville was not part of the Agreement (Samuels 63), or that Thomasville had already been considered by defendant, as defendant was required to do under paragraph 4 of the Agreement which provided "(i)n the event you submit a possible acquisition which has theretofore been considered by us ... we will advise you promptly of that fact..." (def.'s Ex. A). Donnelly admitted that no writing was ever sent to plaintiff advising him not to become involved with Thomasville (Tr. 143).

8. In early January 1967 the plaintiff met Finch at the Furniture Mart in Chicago and inquired as to the "Armstrong deal" (Samuels 60; Finch 234). Finch indicated that he was not interested in being acquired (Samuels 60; Finch 234). Soon after speaking with Samuels, Finch called M. J. Warnock, President of defendant, and informed Warnock that plaintiff had spoken with him (Finch 235). Warnock gave a "very strong directive to do everything [Donnelly] could to make certain that Mr. Samuels did not involve himself with Mr. Finch or the Thomasville matter." (Tr. 142).

9. Donnelly sent plaintiff a letter dated January 11, 1967 terminating the Agreement (pltf.'s Ex. 14).

10. Defendant terminated the Agreement as a result of plaintiff's meeting with Finch in Chicago which meeting was pursuant to plaintiff's engagement as a "finder, broker or negotia-

tor" in accordance with the specific and repeated instructions of Donnelly. The termination was an attempt by defendant to frustrate plaintiff's performance of his agreement with defendant and to avoid the obligation to pay the plaintiff the commission provided for in the Agreement.

11. The merger of Thomasville into defendant was consummated on November 1, 1968. In connection with the merger, defendant issued 1,909,043 shares of its Common Stock and 100,000 shares of its $2.375 Convertible Preferred Stock to the Thomasville stockholders (pltf.'s Ex. 2). The closing price of defendant's Common Stock on the New York Stock Exchange on November 1, 1968 was $78.125 (pltf.'s Ex. 3). The value of the 1,909,043 shares was $149,143,984. The Preferred Stock was convertible into Common Stock on the basis of 1.05 shares of Common Stock for each Preferred Stock (pltf.'s Ex. 1, page 19). The value of each share of Preferred Stock is not less than $81.90 and the value of 100,000 shares is not less than $819,000. The total value of the shares of defendant issued in the merger was $149,962,984.

12. On July 5, 1968 the plaintiff demanded his commission under the Agreement (pltf.'s Ex. 16), which defendant has refused to pay. The amount which is due defendant under paragraph 6 of the Agreement for services rendered in connection with the Thomasville merger is $4,498,289.

13. The reasonable value of the services performed by plaintiff in connection with the Thomasville merger based on the

normal finders fee absent a written agreement is $1,599,630 (Nathanson 165; Berman 353-354).

Babbitt

14. There is no dispute that the plaintiff was the finder for defendant in connection with the acquisition of the Babbitt assets (pltf.'s Ex. 17; Def.'s Ex. C; Answer para. Eleventh). The March 31, 1967 agreement between defendant and Babbitt (the "Agreement") names plaintiff as the finder who defendant is responsible to pay (pltf.'s Ex. 4, paragraph 11).

15. The only dispute on the Babbitt claim is the amount of the fee payable to plaintiff. The basic Agreement (def.'s Ex. A) provides in paragraph 6 that the defendant shall pay plaintiff a fee of 3% of the total consideration paid by defendant for an acquisition found by plaintiff.

16. The Babbitt Agreement provides in paragraph 1 that defendant agreed to purchase from Babbitt all of Babbitt's rights in certain trademarks and trade names (paragraph 1(a)), finished inventory of cleanser (paragraph 1(b)), and formulae and knowhow (paragraph 1(c)). The purchase price was $300,000 and the value of the inventory (paragraph 2). On the same date as the Babbitt Agreement, March 31, 1967, defendant and Babbitt executed a Distributorship Agreement (pltf.'s Ex. 5), and by letter agreement dated April 1, 1967 between defendant and Babbitt (pltf.'s Ex. 6), defendant purchased from Babbitt the finished inventory. The total amount paid for such inventory was $104,791 (pltf.s Exs. 7, 8 and 9).

17. Plaintiff was never paid his fee of 3% of the consideration paid by defendant for the inventory (Samuels 74-76). The $9,000 fee paid by defendant to plaintiff on December 12, 1967 was based solely on the $300,000 consideration paid for the trademarks (def.'s Ex. C). Plaintiff was not aware that any more than $300,000 was paid by defendant when he accepted the $9,000 fee (Samuels 15). The dispute between plaintiff and defendant over the fee was solely whether plaintiff's fee would be 3% or less (Samuels 11; Tr. 451-452). The dispute did not concern the nature of the assets purchased from Babbitt or the amount paid for the assets.

18. Plaintiff's additional fee under paragraph 6 of the Agreement is $3,143.

CONCLUSIONS OF LAW

Thomasville

A. Defendant wrongfully breached the Agreement because it terminated the Agreement in bad faith after plaintiff partially completed performance, thereby preventing plaintiff from completing his performance under the Agreement;

B. Plaintiff is entitled to damages in the amount of $4,498,289, the fee provided for in the Agreement, or alternatively;

C. Plaintiff is entitled to damages in the amount of $1,599,630 for services rendered;

together with interest from November 1, 1968.

Howard v. Daly, 61 N.Y. 362 (1874)

Hollwedel v. Duffy--Mott Co., Inc., 263 N.Y. 95 (1933)

Blair & Co. v. Weinberger, 155 N.Y.S.2d 203 (N.Y. Co. 1956)

Babbitt

A. Defendant wrongfully failed to pay plaintiff the full amount of the fee provided for in the Agreement because the defendant did not pay plaintiff 3% of the purchase price paid by defendant for the Babbitt inventory;

B. Plaintiff is entitled to damages in the amount of $3,143, together with interest from December 12, 1967;

C. There was no accord and satisfaction when plaintiff accepted the $9,000 payment because at the time of acceptance of payment (i) there was no dispute as to the amount of the consideration paid by defendant for the Babbitt assets and (ii) the $9,000 was accepted on the mistaken or fraudulently induced assumption that only $300,000 was paid for such assets.

Schuttinger v. Woodruff, 259 N.Y. 212 (1932)

Portchester Elec. Constr. Corp. v. Hartsdale Manor Homes, 96 N.Y.S. 2d 604 (App. Div. 2d Dept. 1950)

Brooklyn Heights R. Co. v. Brooklyn City R. Co., 135 N.Y.S. 990 (App. Div. 2d Dept. 1912)

Dated: New York, New York
October 25, 1973

Respectfully submitted,

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

HARRY S. SAMUELS, :

Plaintiff, : 69 Civ. 3022

-against- : DEFENDANT'S PROPOSED FINDINGS OF FACT AND

ARMSTRONG CORK COMPANY, : CONCLUSIONS OF LAW

Defendant. :

- - - - - - - - - - - - - - - - - - - -x

Defendant, Armstrong Cork Company, respectfully submits the following proposed findings of fact and conclusions of law.

PROPOSED FINDINGS OF FACT

1. Plaintiff, Harry S. Samuels, is a citizen and resident of the State of New York, and is a member of the Bar of the State of New York.

2. Defendant, Armstrong Cork Company (hereinafter "Armstrong"), is a citizen and resident of the Commonwealth of Pennsylvania, having its principal place of business in Lancaster, Pennsylvania.

3. On or about August 25, 1966, the plaintiff and the defendant entered into a non-exclusive "finder", "broker", "negotiator" contract (the "Contract") (Ex. A). The Contract was drafted by the plaintiff (Exhibits 11, 11A and Samuels

40*, Binns 307, Donnelly 420) and edited by the defendant Donnelly 306-307, Binns 420). The Contract was in full force and effect from August 25, 1966 to February 10, 1967.

4. (a) The Contract provided for the payment of a fee in certain situations, among others:

> "6. We (Armstrong) will pay you (Samuels) as a fee a sum of money equal to three per cent (3%) of the total consideration paid by us for an acquisition found and negotiated and consummated by you on our behalf. In the event the said consideration shall be capital stock of our Company, the amount thereof for the purpose of computing your fee shall be based upon the closing price thereof on the New York Stock Exchange on the date of closing the transaction. Said fee shall be payable to you within fifteen (15) days after the closing. We reserve the option to arrange for the seller in any such transaction to pay your fee in accordance with this agreement."

(b) Payment of a fee, any other compensation or expenses, by the defendant was specifically excluded and/or waived in certain situations, among others:

> "1. We (Armstrong) will not be liable for any disbursements or expenses of any kind or nature made or incurred by you (Samuels) in your search for companies for possible acquisition by us, even though done as a result of a suggestion from us."

and

> "4. In the event you (Samuels) submit a possible acquisition which has theretofore been considered by us (Armstrong), even though no negotiations with respect thereto had taken place, and irrespective of the source thereof

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*Names in parenthesis followed by a number indicate the witness and the page number of the trial transcript.

(suppliers, customers, bankers, employees, outside directors, other brokers or any other source), we will advise you promptly of that fact and, thereafter, you will refrain from working on our behalf on that deal. In any such case, if at any time we consummate a transaction with reference to a company so involved, we will have no obligation to you for a fee or other compensation or expense reimbursement."

(c) Termination was covered in Section 10:

"10. Either of us may terminate this Agreement at any time by giving the other at least thirty (30) days' written notice of intent to terminate. It goes without saying that we would not, in bad faith, exercise our right to terminate simply to avoid the payment of a fee to you in accordance with this agreement."

WITH RESPECT TO COUNTS I AND II OF THE COMPLAINT (THE THOMASVILLE FURNITURE INDUSTRIES, INC. ACQUISITION)

5. On or about August 25, 1966 and during the relevant periods, the officers of Armstrong were: M. J. Warnock, President (now Chairman of the Board), James H. Binns, Senior Vice President (now President), Max Banzhaf, Staff Vice President (now Vice President and Treasurer), and F. S. Donnelly, Jr., Treasurer (now Vice President and General Manager). At this time, Thomas A. Finch was President of Thomasville Furniture Industries, Inc. (hereinafter "Thomasville") (now also Senior Vice President of Armstrong).

6. During 1965 Armstrong became interested in acquisition. To that end, Armstrong formed an Acquisition Evaluation Committee in September of 1965 (Banzhaf 243, 366, 416). Binns was Chairman of the Acquisition Evaluation Committee,

and Banzhaf was a member (Warnock 243, Binns 415). In September of 1965 Banzhaf was appointed head of a sub-committee of the Acquisition Evaluation Committee to investigate possible acquisitions in the furniture industry (Donnelly 303, Binns 416).

7. Prior to the date of the Contract (August 25, 1966) and Armstrong's first meeting with Samuels (July 22, 1966), members of Armstrong's Acquisition Evaluation Committee visited the Thomasville plant twice and met Finch, President of Thomasville.

(a) As head of Armstrong's furniture acquisition sub-committee, Banzhaf and another member of the Acquisition Evaluation Committee met with officers of Thomasville on or about November 23, 1965 at the Thomasville plant in Thomasville, North Carolina (Banzhaf 247, 276).

(b) On or about January 21, 1966, Banzhaf and other members of Armstrong's Acquisition Evaluation Committee met a second time with Thomasville officers, including Finch, and discussed Armstrong's possible entry into the furniture industry as a supplier or a manufacturer, through either acquisition or internal expansion (Banzhaf 247, 248, 278).

8. Before Armstrong's first meeting with Samuels (July 22, 1966), Armstrong had collected and studied the financial

and other data of several furniture companies, including Thomasville, with a view toward acquisition (Exhibits I, J, K, L; Warnock 365-374).

9. On or about July 22, 1966, the plaintiff first met with Armstrong's officers (Pl. Ex. 24(V)). At this meeting, prior to the execution of the Contract (August 25, 1966), the plaintiff was specifically told by Binns that Armstrong was already interested in and pursuing a possible merger with Thomasville, that Thomasville was excluded from any dealings with the plaintiff, and that Armstrong would continue to pursue Thomasville independently of plaintiff, and instructed the plaintiff to stay away from Thomasville (Donnelly 324, 332, Warnock 377-378, 410, Binns 418, 433, 434).

10. During the term of the Contract (August 25, 1966 until February 10, 1967) the officers of Armstrong met twice with the officers of Thomasville to discuss possible affiliation.

11. At the first such meeting on October 18, 1966, Banzhaf, Donnelly and another Armstrong officer met with Finch at the Wachovia Bank and Trust Company, Winston-Salem, North Carolina (Finch 185, 187, Banzhaf 251, Donnelly 320). Affiliation between the two companies was proposed and discussed (Finch 187-188, Banzhaf 252-253, Donnelly 320-321,

341, Binns 433). The plaintiff did not suggest, arrange or attend this meeting (Finch 185-186, Banzhaf 251-252, Donnelly 327). This meeting was arranged by Donnelly (Donnelly 341).

12. The second meeting was on January 4, 5 and 6, 1967, when Thomasville officers, including Finch, met with Armstrong officers at the invitation of the latter at the Armstrong plant in Lancaster, Pa. (Ex. F; Finch 189, Banzhaf 258-259, Donnelly 321, Warnock 383, Binns 421-422). Again, affiliation between the two companies was proposed and discussed (Finch 191-192, Banzhaf 265-266, Donnelly 321, Warnock 384-387, Binns 422-424). The plaintiff did not suggest, arrange or attend this meeting (Samuels 114, Finch 189-190, 205, Banzhaf 260-262, Warnock 385, Binns 433).

13. Plaintiff's Contract with Armstrong terminated on or about February 10, 1967 upon the expiration of 30 days following written notice given by Armstrong dated January 11, 1967 (Ex. 14).

14. The Contract was terminated by Armstrong in good faith (Warnock 412-414). Notice of termination dated January 11, 1967 was given to plaintiff before Armstrong became aware of plaintiff's intervention with Finch in violation of Armstrong's instructions (See Proposed Findings 9, 27 and 30), and termination did not result from this violation of instructions (Donnelly 325-326, 343-345, Warnock 412-414).

15. As a result of plaintiff's disobedience of defendant's previous instructions (See Proposed Finding 9) caused by plaintiff's unauthorized interference with Finch (See Proposed Findings 24, 25, 26 and 29), plaintiff was informed during mid-January 1967, for a second time, that Armstrong was pursuing Thomasville independently of plaintiff and instructed by Donnelly to stay away from Thomasville (Banzhaf 260, 292, Donnelly 324, 342-343).

16. On or about April 27, 1967, Finch again met with Warnock and Binns at the Barclay Hotel in Philadelphia. Again, the possible merger of the two firms was discussed (Ex. G; Finch 195-196, Warnock 392-395, Binns 426-427). The plaintiff did not suggest, arrange or attend this meeting (Binns p. 433).

17. On or about August 24 and 25, 1967, possible merger between Armstrong and Thomasville was again discussed at a meeting in Thomasville between Finch and Armstrong officers, Warnock, Binns and Banzhaf (Finch 210-214, Banzhaf 262-266, Binns 427-428). The plaintiff did not suggest, arrange or attend this meeting (Binns 433).

18. On or about November 10, 1967, Thomasville's directors decided not to affiliate with Armstrong. Finch informed

Binns of this decision (Finch 214, Binns 429).

19. Because Thomasville did not want Armstrong to merge with any of its competitors, Thomasville resumed merger discussions with Armstrong in mid-February, 1968 (215-216, 266-268). The plaintiff played no part in the resumption of discussions (Binns 433).

20. During the period from mid-February, 1968 until the end of June, 1968, officials of Armstrong and Thomasville met several times and discussed affiliation (Finch 215-220, Banzhaf 266-275, Warnock 397-402, Binns 429-431). The plaintiff did not suggest, arrange or attend any of these meetings (Binns 433).

21. On or about July 2, 1968, officers of Armstrong met with officers of Thomasville and an informal affiliation agreement was reached (Ex. H; Finch 173, 220-222, Banzhaf 275, Warnock 402). Plaintiff did not suggest, arrange or attend this meeting (Binns 433).

22. On or about November 1, 1968, the formal affiliation agreement between Armstrong and Thomasville was consummated (Finch 173, 222-223, Warnock 402). According to this agreement Armstrong paid a total of $149,962,984 for Thomasville (Ex. 1, 2 and 3; 456-458). Plaintiff

did not attend the closing or negotiate any of the terms (Samuels 89-90).

23. During the term of the Contract (August 25, 1966 until February 10, 1967) the plaintiff submitted numerous companies to Armstrong for possible acquisition (Ex. D; Samuels 108-109). "Thomasville" was not one of the companies submitted by plaintiff (Ex D; Donnelly 332a, 348, Binns 433).

24. Because Armstrong was considering Thomasville entirely independently of plaintiff and the possible acquisitions submitted by plaintiff were competing with Thomasville, plaintiff discouraged Armstrong from acquiring Thomasville (Donnelly 316-318). In his only written communication relating to Thomasville (Ex. 13), plaintiff recommended:

> "[S]ince it is the least likely of the 'deals' you might aborn [sic.] it."

25. Armstrong never requested plaintiff to intervene, participate, or take any action whatsoever in furtherance of Armstrong's pursuit of Thomasville. (Banzhaf 260, 292, Donnelly 323-324, 332, 342-343, Warnock 377-378, 410, Binns 418, 434).

26. Plaintiff's testimony that he was repeatedly requested by Donnelly to find out if Finch was interested in affiliation with Armstrong (Samuels 48, 51-52, 56, 68), is rejected as incredible.

(Not only does Donnelly deny ever making such requests (Donnelly 316) but such requests would have been highly improbable in the light of Binns' instructions to Samuels before the Contract with plaintiff was executed (Proposed Finding 9) and in the light of the direct contacts had by Donnelly and other officers of Armstrong with Finch during the time Donnelly's requests are alleged to have been made (Donnelly 319, 321, 322-322A, 324-330). The relationship between Armstrong's officers and Finch had developed by October 18, 1966 (the date Donnelly and Banzhaf met with Finch at the Wachovia Bank (Banzhaf 251, Donnelly 319) to the point where it is preposterous to believe that Donnelly would have requested an outside finder to intercede with Finch. Furthermore, by January 6, 1967 Finch had spent 3 days with the top management of Armstrong (Banzhaf 258-259, Donnelly 321, Warnock 383, 389, Binns 421-422), in the course of which a merger was, for the second time, proposed to Finch (Finch 191, Donnelly 321-322, Warnock 386-388). It is also highly improbable that Donnelly would have "bugged" (Samuels 117) Samuels to find out if Finch was available because of Finch's insistence with Armstrong management that their discussions be kept in the strictest confidence (Finch 194, 235-236, Warnock 389). Finally, Samuels' response to these alleged supplications is wholly inconsistent with Samuels' method of conducting

his business as Samuels testified, he "moves fast" in his finders business (Samuels 117). Yet despite the alleged urgings (Samuels 117) by Donnelly starting in August 1966 Samuels claims he made two phone calls late December 1966 and March 1967, four months apart, and attempted to see Finch twice at trade shows in Chicago during January and June of 1967. Such a diffident response belies Samuels' claim that he was reacting to repeated "bugging" from Donnelly from August 1966 through June 1967 (Samuels 117-118), and suggests that the alleged Donnelly requests were never in fact made.

27. Any attempt by Samuels to intervene in the Armstrong-Thomasville merger discussions was contrary to Armstrong's specific instructions (See Proposed Findings 9 and 13).

28. According to the plaintiff, plaintiff had a total of four contacts with Thomasville and all four contacts were with Finch.

29. Plaintiff claims his first contact with Finch was in late December 1966 when plaintiff telephoned Finch and made an appointment to meet Finch at a Chicago furniture market in mid-January 1967 Samuels 78-79). Plaintiff has no record of this call (Samuels 118-120), such a call is contrary to plaintiff's testimony at his deposition (Samuels 81-87), and Finch denies ever receiving a call from the plaintiff (Finch 209). The court finds no such call in fact occurred.

30. According to plaintiff, plaintiff's second contact with Finch was at a Chicago furniture market in mid-January 1967 (Samuels 59-61). Admittedly, at this meeting, plaintiff was told by Finch that Finch was not interested in plaintiff's proposal regarding affiliation with Armstrong (Samuels 60, 93). The court finds that such a meeting did occur and that Samuels initiated it contrary to Armstrong's instructions.

31. Plaintiff claims his third contact with Finch was a telephone call to Finch in March, 1967, at which time plaintiff claims Finch consented to attend a meeting with Armstrong (Samuels 68-69). Finch denies ever receiving such a call from plaintiff (Finch 207-209), and Donnelly denies any report from plaintiff regarding any such call (Donnelly 324-325). This alleged call in March, 1967 did not occur during the term of the Contract (Samuels 71, 92). The court finds that such telephone call did not in fact occur and, in any event, that Finch never did tell Samuels he would be interested in meeting with Armstrong (Finch 209).

(Besides Finch's and Donnelly's denial of such calls, such a conversation with Finch is incredible in light of the Armstrong-Thomasville situation in March of 1967. By March, 1967, there had been five meetings between Armstrong and Thomasville and merger discussions had

taken place during at least two of these meetings (see Proposed Findings 7(a), 7(b), 8, 11, 12). Such a conversation is also incredible because of Finch's insistence that the Armstrong-Thomasville merger discussions be kept in the strictest confidence (Finch 194, 235-236, Warnock 389). Moreover, Samuels' credibility is generally open to serious question in view of the radically different testimony that he gave at his depositions from that he gave on this trial (Samuels 80-87, 131-133).

32. According to plaintiff, plaintiff's fourth contact with Finch was in June 1967 (Samuels 69, 80) at the Chicago furniture market. Admittedly, plaintiff's proposal regarding an Armstrong-Thomasville merger was again rejected by Finch (Samuels 69, 70). Furthermore, this alleged meeting in June 1967 did not occur during the term of the Contract (Samuels 71, 92).

33. At no time was plaintiff told by Finch that Thomasville was available for acquisition (Samuels 91-94, Finch 193, 209, 227, 230-234).

34. At no time did plaintiff secure the consent of Thomasville to any proposed merger or affiliation with Armstrong (Samuels 64-65).

35. At no time did plaintiff introduce any officers of Thomasville to any officers of Armstrong (Samuels 144-146).

36. At no time did plaintiff arrange or attend any meetings between Armstrong and Thomasville (Samuels 114, Finch 185-186, Banzhaf 252, 261-262, Warnock 392-393, Binns 433).

37. At no time did plaintiff participate in any negotiations between Armstrong and Thomasville (Samuels 90).

38. Plaintiff has not proved by a fair preponderance of credible evidence that plaintiff "found and negotiated and consummated" the Thomasville acquisition for Armstrong.

39. Plaintiff performed no services which, under the Contract, would entitle him to compensation with respect to the Thomasville acquisition.

40. Apart from the Contract, plaintiff has not proven any agreement or services that would entitle him to any compensation with respect to the Thomasville acquisition.

WITH RESPECT TO COUNTS III AND IV OF THE COMPLAINT (THE ACQUISITION OF CERTAIN ASSETS OF B.T. BABBITT, INC.)

41. Regarding Armstrong's acquisition of certain assets of B.T. Babbitt, Inc. (hereinafter "Babbitt"), plaintiff informed Armstrong of the "availability of the Babo Trademark business and formulas owned by the B. T. Babbitt

Company" (Ex. B, Samuels 6-7), and arranged and attended one meeting between Armstrong and Babbitt during November 1967 (Ex. 17; Samuels 74).

42. After the initial meeting between Armstrong and Babbitt during November 1967, the plaintiff did not arrange or attend any meetings between Armstrong and Babbitt or participate in negotiations in any way (Samuels 10).

43. On or about December 11, 1967, Armstrong purchased certain trademarks, trade names, formulae and know how from Babbitt. The total purchase price was $300,000 (Ex. 5, Samuels 15, 17).

44. Certain Babbitt inventory was purchased by Armstrong in accordance with a requirements contract also executed on or about December 11, 1967. Armstrong ultimately paid a total of $104,691.79 for this inventory (Exhibits 7, 8 and 9).

45. On or about December 12, 1967, Armstrong mailed a check in the amount of $9,000 to Samuels with a covering letter stating, "our check for $9,000 [is] to cover your services rendered on our acquisition of the Bab-O and Babbitt trademarks." (Ex. C). Samuels received the covering letter and the $9,000 check (Samuels 20, 75), and endorsed and cashed the check (Samuels 12, 19).

46. Prior to Samuels cashing the $9,000 check (referred to in paragraph 45 above), a dispute existed between Samuels and Armstrong concerning the amount of Samuels' fee in connection with Armstrong's acquisition of certain assets of Babbitt. (Ex. 15, Samuels 8-12, 75-76, 444-446).

47. Samuels agreed to accept the $9,000 check (referred to in paragraphs 45 and 46 above) in full and final settlement of his fee in connection with Armstrong's acquisition of certain assets of Babbitt (446).

48. Samuels did not protest the amount of the check until this action was commenced over a year and 6 months after Samuels, received the $9,000 check (Samuels 16).

PROPOSED CONCLUSIONS OF LAW

1. This court has jurisdiction of the parties and subject matter under the provisions of Title 28 U.S.C. §§1332 and 1441.

2. The substantive law of the State of New York governs the rights of the parties.

3. The burden of proof is on the plaintiff as finder to prove clearly all the material elements of his cause of action against the defendant.

4. The relationship between the defendant, the Armstrong Cork Company, and the plaintiff, Harry S. Samuels, was governed

by the Contract.

5. The plaintiff has failed to prove by a fair preponderance of the credible evidence that Thomasville was covered by the Contract, and if so, not excluded by the operation of Section 4.

6. The term "found" is used in the Contract in its established legal meaning, especially since the plaintiff is a professional finder and a member of the New York Bar. Von Bremen v. Mac Monnies, 200 N.Y. 41, 47, 93 N.E. 186 (1919); Restatement of Contracts § 234 (1932).

7. Plaintiff has failed to prove by a fair preponderance of credible evidence that, as required by the Contract, plaintiff "found and negotiated and consummated" Armstrong's acquisition of Thomasville. Finding entails something more than the mere dropping or suggesting of a name. Towers v. Doroshaw, 5 Misc. 2d 241, 249, 159 N.Y.S.2d 367 (1957). Plaintiff failed to prove that he was the procuring cause of the transaction; plaintiff did not bring the parties together or produce a company which was ready, willing and able to perform. Sibbald v. The Bethlehem Iron Company, 83 N.Y. 378, 383 (1881); Duane v. Polk, 32 N.Y.S.2d 568, 572 (1941); Karlin v. Heller, 137 Misc. 261, 242 N.Y.S. 188 (1930); Seligson v. Young, 189 Pa. Super. 510, 151 A.2d 792 (1959); Henderson v. Mellor, 72 P.L.J. 974 (1924); Mitchell v. Baldwin,

265 Pa. 148, 157, 108 A.605 (1919); Schoenfeld v. Meeks, 166 Pa. Super. 101, 70 A.2d 377 (1950); Gersh v. Rolland, 285 Pa. 141, 131 A. 723 (1926); Keys v. Johnson, 68 Pa. 42 (1871).

8. Apart from the Contract, the plaintiff cannot recover a finder's fee or any other compensation. Under New York law, where there is an express contract no recovery can be had on any theory of implied contract. Miller v. Schloss, 218 N.Y. 400, 406, 407 (1916); Larme Estates, Inc. v. Omnichrome Corp., 250 App. Div. 538, 540, aff'd 275 N.Y. 426 (1937); Hohenberg Co. v. Iwai New York, Inc., 6 App. Div. 2d 575, 180 N.Y.S.2d 410 (1958). Moreover, even if a common law right to recovery did exist, plaintiff contracted it away under Sections 1, 2 and 4 of the Contract.

9. The defendant terminated the Contract in good faith. Sibbald v. The Bethlehem Iron Company, 83 N.Y. 378, 383 (1881).

10. Plaintiff disobeyed the defendant's instructions to stay away from Thomasville, and therefore, is precluded from recovering any compensation for his services. Neil & P. Co. v. Kitchin, 219 App. Div. 853, 221 N.Y.S. 867 (1927).

11. Plaintiff's acceptance of the $9,000 check offered by the defendant in full settlement of plaintiff's fee in connection with Armstrong's acquisition of certain assets

of B. T. Babbitt, Inc. operated as an accord and satisfaction which bars plaintiff claims for any further compensation. Schuttinger v. Woodruff, 259 N.Y. 212, 216-217, 181 N.E. 361 (1932); Consolidated Edison Co. v. Arroll, 66 Misc. 2d 816, 322 N.Y.S.2d 420, 422 (1971); Carlton Credit Corp. v. Atlantic Refining Co., 12 App. Div. 2d 613, 208 N.Y.S. 2d 622 (1960); Accord, Fuller v. Kemp, 138 N.Y. 231, 235, 33 N.E. 1034 (1893); See, Hutchinson v. Culbertson, 161 Pa. Super. 519, 520, 55 A.2d 567 (1947); Lucacher v. Kerson, 355 Pa. 79, 48 A.2d 857 (1946). The fact that plaintiff had made a bid for more did not water down the effect of his acceptance of a lesser sum in full satisfaction. Norton v. Tart, 16 Misc. 2d 681, 189 N.Y.S. 2d 990, 993 (1959). Unilateral mistake does not negate the binding effect of an accord and satisfaction. Assurance Co. of America v. Pulin, 142 N.Y.S. 2d 809, 810 (1955); Bloomington Mining Co. v. Brooklyn Hygienic Ice Co., 58 App. Div. 66, 68 N.Y.S. 699, 703 aff'd, 171 N.Y. 673, 64 N.E. 1118 (1901); Sears v. Grand Lodge A.O.U.W., 163 N.Y. 374 (1900).

12. The plaintiff has been fully compensated under the Contract for his services in connection with Armstrong's acquisition of certain assets of B. T. Babbitt, Inc.

13. Defendant, Armstrong Cork Company, fully complied with its obligations under the Contract.

14. Defendant, Armstrong Cork Company, is entitled to judgment dismissing the complaint, together with the costs and disbursements of this action.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -

HARRY S. SAMUELS,

Plaintiff,

-against-

ARMSTRONG CORK COMPANY,

Defendant.

69 Civil 3022

OPINION, FINDINGS OF FACT and CONCLUSIONS OF LAW.

- -

APPEARANCES:

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LEVET, D. J.

This action was commenced by plaintiff, Harry S. Samuels, for monies allegedly due him for services he rendered as a buiness broker pursuant to a written agreement with defendant, Armstrong Cork Company. The written agreement (the "Agreement") provided for plaintiff to act as a "finder" of companies

for possible acquisition by defendant. If defendant consummated a transaction based upon an acquisition found or negotiated by plaintiff, plaintiff's fee was to be a sum of money "equal to three percent (3%) of the total consideration paid by [Armstrong]." (Deft. Ex. A).

Plaintiff has made two claims:

The first claim seeks compensation for services allegedly rendered in connection with the merger of Thomasville Furniture Industries, Inc. ("Thomasville") into defendant. The second claim seeks compensation for services rendered in connection with the acquisition of certain assets of B. T. Babbitt, Inc. ("Babbitt") by defendant.

This case was tried to the court without a jury. Substantial issues of fact and law were involved in this action. The court has carefully examined the proof submitted and after extensive consideration has decided the issues as hereinafter enunciated.

One evidentiary question arose during the course of the trial as to which the court reserved determination. Plaintiff moved to have defendant's Exhibits I, J and L withdrawn from evidence on the ground that it had not been demonstrated that the exhibits were kept in the ordinary course of defendant's

business. (408)[1] This court reserved decision on the motion and, at the close of trial, requested counsel to submit briefs on the issue. This was not done. The court has reviewed the testimony offered to lay a foundation for the introduction of defendant's Exhibits I, J and L into evidence (368-374, 406-408) and finds it sufficient for that purpose. A reading of Warnock's testimony reveals that, contrary to plaintiff's contention, he did know that the challenged exhibits were kept in the ordinary course of Armstrong's business. (374) What he could not testify to was whether the exhibits were prepared by employees of Armstrong. (371-373, 407) This, of course, is not necessary. Consequently, plaintiff's motion to have defendant's Exhibits I, J and L withdrawn from evidence is denied.

After hearing the testimony of the parties, examining the exhibits and the Proposed Findings of Fact and Conclusions of Law submitted by counsel, this court makes the following Findings of Fact and Conclusions of law:

FINDINGS OF FACT

1. Plaintiff, Harry S. Samuels, is a citizen and resident of the State of New York and was so at all times relevant to this action.

(1) Numbers in parentheses, unless otherwise, specified, refer to the stenographic minutes of the trial before this court on October 9, 10, 11, 1973.

2. Defendant, Armstrong Cork Company, is a corporation, organized under the laws of Pennsylvania, and having its principal place of business in Lancaster, Pennsylvania and was so at all times relevant to this action.

3. On or about August 25, 1966, plaintiff and defendant entered into a non-exclusive agreement (Ex. A) under which plaintiff was to act as a "finder," "broker," or "negotiator" in obtaining acquisition for defendant. An initial draft of the agreement was made by plaintiff. (40, 307, 420; Exs. 11, 11A) The draft was edited by defendant (306-307, 420) and, upon signing by both parties, went into effect on August 25, 1966.

4. The agreement provided for the payment of a fee under certain conditions. Inter alia, it provided for a fee when plaintiff had found, negotiated and consummated an acquisition on behalf of defendant. The amount of the fee was to be 3% of the total consideration paid by Armstrong. If the consideration paid by Armstrong was not cash but rather its own capital stock, the amount of consideration, for purposes of computing the fee, was to be based on the closing price of such stock on the New York Stock Exchange on the date of closing the transaction. (Ex. A, ¶6)

5. The agreement specifically excluded and/or waived payment of fees, compensation or other expenses in certain

situations. Among others, Armstrong was not to be liable for any expenses incurred by plaintiff in his search for possible acquisitions by defendant, even though such search was done at defendant's request. (Ex.A, ¶1)

6. The agreement also specifically excluded and/or waived payment of fees, compensation or other expenses where plaintiff submitted a possible acquisition which defendant had previously considered, irrespective of whether any negotiations had taken place with respect to acquisition. If such a situation arose, Armstrong was to advise Samuels promptly of that fact and Samuels was to thereafter refrain from working on Armstrong's behalf on that deal. (Ex. A, ¶4)

7. The agreement provided that it could be terminated by either party at any time by giving the other at least thirty days' written notice of intent to terminate. Armstrong agreed not to terminate the contract in bad faith simply to avoid the payment of a fee to plaintiff in accordance with the agreement. (Ex. A, ¶10)

8. On or about August 25, 1966 and during all the relevant periods, the officers of Armstrong were: M.J. Warnock, President (now Chairman of the Board), James H. Binns, Senior Vice President (now President), Max Banzhaf, Staff Vice President

(now Vice President and Treasurer), and F.S. Donnelly, Jr., Treasurer (now Vice President and General Manager). At that time, Thomas A. Finch was President of Thomasville (now also Senior Vice President of Armstrong).

WITH RESPECT TO COUNTS I AND II OF THE COMPLAINT

9. During 1965, Armstrong became interested in acquisitions. An Acquisition Evaluation Committee was formed in September of 1965 (243, 366, 416) of which Binns was Chairman and Banzhaf was a member. (243, 415)

10. Members of Armstrong's Acquisition Evaluation Committee met with officers of Thomasville on two separate occasions prior to Armstrong's first contact with Samuels on July 22, 1966. (See Finding 12)

(a) The first meeting between Armstrong and Thomasville took place on or about November 23, 1965, when officers of both companies, including Banzhaf of Armstrong, met at the Thomasville plant in Thomasville, North Carolina. (247)

(b) The second meeting between officers of Armstrong (including Banzhaf) and Thomasville (including Finch) was on or about January 21, 1966. The discussion at this meeting centered around Armstrong's possible entry into the furniture industry as a supplier or manufacturer, through either acquisition or internal expansion. (247-248, 278)

11. Prior to Armstrong's first meeting with Samuels on July 22, 1966 (see Finding 12), Armstrong had collected and considered data on several furniture companies, including Thomasville, with a view toward possible acquisition. (365-374; Exs. I, J, K, L)

12. On or about July 22, 1966, plaintiff and Armstrong had their first contact. (Ex. 24) At this meeting, Binns specifically told plaintiff not to approach Thomasville since Armstrong was already interested in that company as a possible acquisition and would follow through on the matter itself. (324, 332, 377-378, 410, 418, 433-434)

13. On October 18, 1966, Banzhaf, Donnelly and another Armstrong officer met with Finch at the Wachovia Bank and Trust Company, Winston-Salem, North Carolina. (185, 187, 251, 320) Affiliation between the two companies was proposed and discussed. (187-188, 252-253, 320-321, 341, 433) Plaintiff did not suggest, arrange or attend this meeting. (185-186, 251-252, 327) This meeting was arranged by Donnelly.

14. Plaintiff claims his first contact with Finch was in late December 1966 when plaintiff telephoned Finch and made an appointment to meet with Finch at a Chicago furniture market in mid-January 1967. (78-79) Plaintiff has no record of such a call and Finch denies ever having received the call. (118-120,

209) Also, such a call is contrary to plaintiff's testimony at his pretrial deposition. (81-87) The court finds that no such call in fact occurred.

15. At the request of certain Armstrong officers, officers of Thomasville, including Finch, travelled to Armstrong's plant in Lancaster, Pennsylvania. Meetings between the two groups of officers were then held on January 4, 5, and 6, 1967. Possible merger of the two companies was discussed. (189, 258-259, 321, 383, 421-422; Ex. F) Plaintiff did not suggest, arrange or attend this meeting. (114, 189-190, 205, 260-262, 385, 433)

16. Plaintiff's agreement with Armstrong was terminated in good faith on or about February 10, 1967 upon the expiration of thirty days following written notice given by Armstrong dated January 11, 1967 (412-414; Ex. 14)

17. Plaintiff met with Finch at a Chicago furniture market in mid-January 1967 (59-61), at which time plaintiff was told by Finch that he was not interested in plaintiff's proposal regarding affiliation with Armstrong. (60, 93)

18. Subsequent to plaintiff's meeting with Finch in mid-January 1967 (see Finding 17) Samuels was again informed not to approach Thomasville since Armstrong had already become interested in it and would follow through on the matter itself. (260, 292, 324, 342-343)

19. Plaintiff claims that the telephoned and spoke with Finch in March 1967, at which time, plaintiff alleges, Finch consented to attend a meeting with Armstrong. (68-69) Finch denies ever receiving such a call from plaintiff. (207-209) The court finds that such a telephone call did not in fact occur. (209)

20. Officers of Thomasville and Armstrong met in April and August 1967 to discuss the possible merger of the two firms. (195-196, 210-214) Plaintiff did not suggest, arrange or attend either of these meetings. (433)

21. On or about November 10, 1967, Thomasville's directors decided not to affiliate with Armstrong. Finch informed Binns of this decision. (214, 429)

22. In mid-February 1968, discussions between Armstrong and Thomasville were resumed. From then until the end of June 1968, officials of both companies met several times and discussed affiliation. (215-220, 266-275, 397-402, 429-431) Plaintiff did not suggest, arrange or attend any of these meetings. (433)

23. On or about July 2, 1968, an informal affiliation agreement between Armstrong and Thomasville was reached. (173, 220-222, 275, 402; Ex. H) Plaintiff did not suggest, arrange or attend the meeting at which this agreement was signed. (433)

24. On or about November 1, 1968, the formal affiliation agreement between Armstrong and Thomasville was consummated. (173,

222-223, 402) Plaintiff did not attend the closing or negotiate any of the terms. (89-90)

25. During the term of the contract, from August 25, 1966 until February 10, 1967, plaintiff submitted many companies for Armstrong to consider as acquisitions. (108-109; Ex. D) Thomasville was not one of the companies submitted by plaintiff. (332a, 348, 433; Ex. D)

26. Armstrong never asked Samuels to take any part whatsoever in furtherance of Armstrong's pursuit of Thomasville (260, 292, 323-324, 332, 342-343, 377-378, 410, 418, 434) nor did any of its officers request plaintiff to find out if Finch was interested in affiliation with Armstrong. Plaintiff's testimony to the contrary is rejected. (48, 51-52, 58, 68)

WITH RESPECT TO COUNTS III AND IV OF THE COMPLAINT

27. In regard to Armstrong's acquisition of certain trade marks and trade names, finished inventory of cleanser, and formulae and knowhow of Babbitt, plaintiff informed Armstrong of the availability of the above assets (6-7; Ex. B) and arranged and attended one meeting between Armstrong and Babbitt during November 1966. (74; Ex. 17)

28. The March 31, 1967 agreement between defendant and Babbitt (the "Babbitt Agreement") names plaintiff as the finder

to whom defendant is responsible to pay. (Ex. 4, ¶11)

29. On or about December 11, 1967, Armstrong purchased certain trade marks, trade names, formulae, knowhow, and inventory from Babbitt. The purchase price for the trade marks, trade names, formulae and knowhow was $300,000. (15, 17; Ex. 4) The purchase price for the inventory was ultimately $104,691.79. (Exs. 7, 8, 9)

30. On or about December 12, 1967, Armstrong mailed a check to Samuels in the amount of $9,000. (20, 75) This fee was based solely on the $300,000 consideration paid for all the assets except the inventory. (Exs. 4, C) Plaintiff was unaware at the time he accepted the $9,000 fee that the consideration Armstrong paid for all the assets of Babbitt was larger than $300,000. (15) The dispute between plaintiff and defendant over the fee was solely whether plaintiff's fee would be 3% of the consideration paid by Armstrong or less. The dispute did not involve what assets were purchased or the total consideration paid therefor. (11, 451-452)

31. Plaintiff's additional fee under paragraph 6 of the Babbitt agreement is $3,140, which plaintiff has proved he is entitled to receive.

DISCUSSION

THOMASVILLE ACQUISITION

Plaintiff's allegation that he acted as a "finder" in Armstrong's acquisition of Thomasville has been rejected by this court for basically two reasons.

First, the direct relationship certain of Armstrong's officers had developed with Finch over a period beginning in November 1965 makes it impossible for this court to believe that Armstrong would have requested an outsider to intercede with Finch. It should be pointed out in this regard that by the time of plaintiff's initial meeting with Armstrong, officers of that corporation had already met with officers of Thomasville on several occasions and had also made tentative studies of the feasibility of acquiring Thomasville.

Second, Samuels' behavior subsequent to signing the finder's agreement in August 1966 belies his contention that he interested Armstrong in Thomasville and pursued the matter at Armstrong's insistence. Samuels' own testimony indicates that he made only two telephone calls to Finch, one in late December 1966 and one in March 1967, and that he attempted to see him only twice, once in January 1967 and once in June 1967. These facts, taken in the context of the other evidence brought out at trial, fail to prove the actions of Samuels as being those of a man acting as a finder.

CONCLUSIONS OF LAW

1. This court has jurisdiction over the subject matter and the parties by virtue of 28 USC §§ 1332 and 1441.

2. The substantive law of the State of New York governs the rights of the parties. (462)

3. The relationship between plaintiff and defendant was governed by the agreement.

WITH RESPECT TO COUNTS I AND II OF THE COMPLAINT

4. Plaintiff has failed to prove by a fair preponderance of the credible evidence that he "found and negotiated and consummated" Armstrong's acquisition of Thomasville as required by the contract. Plaintiff failed to prove that he was the procuring cause of the acquisition, or that he brought the parties together, or that he produced a company ready, willing and able to perform. Plaintiff is therefore not entitled to recover compensation for the Thomasville acquisition. Sibbald v. The Bethlehem Iron Company, 83 N.Y. 378 (1881); Duane v. Polk, 32 N.Y.S. 2d 568 (1941).

5. Under New York law, a finder is one who introduces or initially brings together the parties who later consummate a transaction. Simon v. Electrospace Corp., 32 App. Div. 2d 62, 299 N.Y.S. 2d 712 (1969); Ames v. Ideal Cement Co., 37 Misc.

2d 883, 235 N.Y.S. 2d 662 (1962).

6. Defendant terminated the contract in good faith. Sibbald v. The Bethlehem Iron Company, 83 N.Y. 378 (1881).

7. Plaintiff is not entitled to recover any fee or compensation apart from the agreement since where there is an express contract no recovery can be had on the theory of implied contract. Miller v. Schloss, 238 N.Y. 400 (1916).

8. Plaintiff is not entitled to recover any compensation for the Thomasville acquisition performed in disobedience to instructions of defendant. Neil & P. Co. v. Kitchin, 219 App. Div. 853, 221 N.Y.S. 867 (1927).

WITH RESPECT TO COUNTS III AND IV OF THE COMPLAINT

9. Defendant failed to pay plaintiff the full amount of the finder's fee provided for in the agreement since defendant did not pay plaintiff 3% of the total purchase price of the Babbitt assets.

10. There was no accord and satisfaction. At the time of the acceptance of the $9,000 payment there was a mutual mistake as to the total consideration paid by Armstrong for the Babbitt assets. Portchester Elec. Const. Corp. v. Hartsdale

Manor Homes, 96 N.Y.S. 2d 604 (App. Div. 2d Dept. 1950). Without a dispute as to the amount of consideration paid for the Babbitt assets, there could be no accord and satisfaction. Schuttinger v. Woodruff, 259 N.Y. 212 (1932).

AS TO COUNTS I, II, III AND IV OF THE COMPLAINT

11. Defendant, Armstrong Cork Company, is entitled to judgment dismissing Counts I and II of the complaint, together with costs of this action.

12. Plaintiff, Harry S. Samuels, is entitled to a judgment in the amount of $3,140, together with interest from December 12, 1967 to date of judgment, without costs. (See Title 48 USC § 1332(b))

Settle judgment on notice pursuant hereto.

Dated: New York, N.Y.
December 21, 1973.

(SGD) RICHARD H. LEVET
United States District Judge

s/ US District Court
Filed
Jan. 9-1974
S D of N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY S. SAMUELS,

Plaintiff

against

ARMSTRONG CORK COMPANY,

Defendant

---

69 Civ. 3022
(R.H.L)

J U D G M E N T

s/ #74,048

This action having come on for trial without a jury before the Court, Honrable Richard H. Levet, United States District Judge presiding, the issues having been duly tried, and the Court having duly rendered its Opinion, Findings of Fact and Conclusions of Law dated December 21, 1973, it is

ORDERED AND ADJUDGED that plaintiff take nothing of defendant Armstrong Cork Company with respect to Counts I and II of the complaint; that Counts I and II of the complaint be dismissed on the merits, without costs; and it is further

ORDERED AND ADJUDGED that, with respect to Counts III and IV of the complaint, plaintiff Harry S. Samuels recover from defendant Armstrong Cork Company the amount of $3,140.00, with interest thereon at the rate of 6% from December 12, 1967 to June 30, 1968, at the rate of 7 1/4% from July 1, 1968 to February 15, 1969, at the rate of 7 1/2% from February 16, 1969 to August 31, 1972, and at the rate of 6% from September 1, 1972 to date of judgment, without costs.

Dated: New York, New York
January 4, 1974

s/ Richard H. Levet
U. S. D. J.

Judgment Entered s/ Jan. 10. 1974

s/ Raymond F. Burghardt
Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY S. SAMUELS,

Plaintiff,

against

ARMSTRONG CORK COMPANY,

Defendant.

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69 Civ. 3022 (R.H.L.)

NOTICE OF APPEAL

S I R S :

PLEASE TAKE NOTICE that plaintiff hereby appeals to the United States Court of Appeals for the Second Circuit from so much of the judgment entered herein in the office of the Clerk of the within court on January 10, 1974, as dismissed on the merits Counts I and II of the complaint.

Dated: New York, New York
s/ Feb 6th, 1974

Yours, etc.

s/ Harry S. Samuels
Harry S. Samuels,
Attorney pro se
110 Rockaway Turnpike
Lawrence, New York

TO: HON. RAYMOND F. BURGHARDT,
Clerk, United States District Court
Southern District of New York
United States Court House
Foley Square
New York, New York

CHADBOURNE, PARKE, WHITESIDE & WOLFE
Attorneys for Defendant
25 Broadway
New York, New York

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

HARRY S. SAMUELS, :

Plaintiff-Appellant, :

-against- :

ARMSTRONG CORK COMPANY, :

Defendant-Appellee. :

- -x

ORDER

69 Civ. 3022
(R.H.L.)

The Defendant-Appellee having moved this Court, the Hon. Richard H. Levet presiding, for an Order pursuant to Rule 10(e) of the Federal Rules of Appellate Procedure striking from the record on appeal all parts of the depositions of Max Banzhaf and Frederick S. Donnelly, Jr., which were not offered or admitted into evidence or before this Court at the trial of this action, the motion having regularly come before this Court, and the Plaintiff-Appellant having appeared and contested said motion;

NOW, upon the Defendant-Appellee's Notice of Motion, the affidavit of Bruce W. Keihner, sworn to the 4th day of October, 1974, in support thereof; the Memorandum of Law in Support of Defendant-Appellee's Motion To Strike, Plaintiff's Memorandum of Law In Opposition To Defendant's Motion to Strike, all prior proceedings herein; and due deliberation having been had thereon, and upon the decision of this Court dated October 18, 1974; it is hereby

ORDERED, Defendant-Appellees' motion to strike from the record on appeal the deposition of Max Banzhaf, except page 9, lines 6-9; page 23, lines 2-19; page 34, lines 20-23 and page 50, lines 9-20, which appear in the trial transcript at pages 277, 279-281, 285-288, and the deposition of Frederick S. Donnelly, Jr., except page 15, lines 17-25 and page 16, lines 1-10, which appear in the trial transcript at pages 333-335, is in all respects granted; and it is further

ORDERED, that the Clerk of the District Court promptly transmit this order to the Clerk of the Court of Appeals, Second Circuit.

Dated: New York, New York
November 6, 1974.

s/ Richard H. Levet
U. S. D. J.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- - - - - - - - - - - - - - - - - - - -x

HARRY SAMUELS :

vs. :

ARMSTRONG CORK COMPANY :

- - - - - - - - - - - - - - - - - - - -x

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF
NEW YORK

CASE NO. 69 Civ. 3022

JUDGE Levet

1st Supplemental Record.

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I HEREBY ACKNOWLEDGE RECEIPT
OF THE CERTIFIED COPY OF DOCKET
ENTRIES, INDEX AND ONE VOLUME
OF ORIGINAL RECORD.

DATE: 11-11-74 s/Elizabeth Wing, Asst. Clerk
A. DANIEL FUSARO
CLERK, U.S.C.A. 2nd CIR.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- x

HARRY S. SAMUELS, :

Plaintiff-Appellant, :

-against- :

ARMSTRONG CORK COMPANY, :

Defendant-Appellee. :

- x

Appellee, pursuant to Rule 30, Federal Rules of Appellate Procedure, designates the following parts of the record for inclusion in the appendix:

1. Certified copy of the docket sheet maintained by the clerk of the District Court.

2. Complaint.

3. Answer.

4. Defendant's Trial Brief.

5. The transcripts of the pretrial conferences conducted on September 10 and September 17, 1973.

6. The Trial Transcript.

7. The following exhibits introduced or marked for identification at trial: 1, 2, 3, 11, 11A, 13, 14, 15, 16, 18, 19, 21, 22, 23, 24, A, D, E, F, G, H, I, J, K, and L.

8. Plaintiff's proposed findings of fact and conclusions of law.

9. Defendant's proposed findings of fact and conclusions of law.

10. Judge Levet's Opinion, Findings of Fact and Conclusions of law.

11. The judgment of the District Court.

12. The Notice of Appeal.

13. The Decision and Order of Judge Levet striking certain parts of the depositions of Max Banzhaf and Frederick S. Donnelly, Jr. from the record on appeal.

14. Clerk's certificate.

15. This Designation.

Dated: January 2, 1975

CHADBOURNE, PARKE, WHITESIDE & WOLFF

By _____
A Member of the Firm

Attorneys for Defendant-Appellee
30 Rockefeller Plaza
New York, New York 10020

TO:
FREEMAN, MEADE, WASSERMAN
& SHARFMAN
Attorneys for Plaintiff-Appellant
551 Fifth Avenue
New York, New York 10017

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Docket No. 74-1915

HARRY S. SAMUELS, Plaintiff-Appellant, -against- ARMSTRONG CORK COMPANY, Defendant-Appellee.	ACKNOWLEDGEMENT OF SERVICE OF APPENDIX AND SUPPLEMENTAL APPENDIX

The undersigned hereby acknowledges service of the appendix and supplemental appendix in the above-captioned matter in behalf of Chadbourne, Parke, Whiteside & Wolff.

January 17, 1975

COPY RECEIVED JAN 17 1975 11:15
CHADBOURNE, PARKE, WHITESIDE & WOLFF
Attorneys for Deft.